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Tuesday
January 14, 1992

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Briefing on How To Use the Federal Register
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: January 31, at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC.
RESERVATIONS: 202–523–5240.
DIRECTIONS: North on 11th Street from Metro Center to southwest corner of 11th and L Streets

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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

Proclamation 6399 of January 10, 1992

Year of the Gulf of Mexico, 1992

By the President of the United States of America

A Proclamation

More than a vast repository of marine and wildlife and other natural wonders, the Gulf of Mexico is also a major factor in the economic life of the United States. This year, we reaffirm our commitment to protecting and preserving this magnificent body of water.

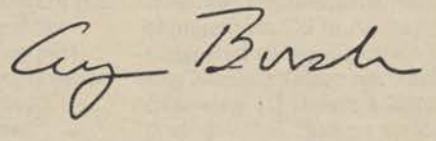
The Gulf of Mexico enchants because it is full of life and beauty. A vital habitat for shorebirds and for much of the Nation's migratory waterfowl, the Gulf region is replete with colors and sounds that are as rich and varied as each evening's sunset. Indeed, few sights can compare to that of majestic whooping cranes winging over Gulf waters to wintering grounds on the Texas coast. Many a visitor has been delighted to watch fishing boats dock at the bustling ports of Florida, Louisiana, Mississippi, and Alabama—only to unload the day's catch and to prepare for another turn at sea. Even amateur anglers know the thrill of casting into Gulf waters, and millions of vacationing Americans have enjoyed the region's warm, sandy beaches.

While we celebrate the natural splendor and the unique cultural heritage of the Gulf coast and barrier islands, we also acknowledge their vital role in our Nation's economy. The fishing, naval defense, and other maritime industries that employ millions of people from Brownsville, Texas, to Key West, Florida, also help to promote the economic prosperity and security of our entire country. Natural gas and oil extracted from the Gulf floor are vital sources of energy for our homes, farms, factories, and automobiles. A significant percentage of all U.S. shipping passes through ports on the Gulf of Mexico, and each year the region generates billions of dollars in revenue through travel and tourism. To ensure that the Gulf remains a viable natural resource for future generations, the United States is determined to reconcile legitimate needs for economic development with our responsibility to protect its beaches, estuaries, fisheries, and wildlife.

The Congress, by Public Law 102–178, has designated 1992 as the "Year of the Gulf of Mexico" and has authorized and requested the President to issue a proclamation in observance of this year.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim 1992 as the Year of the Gulf of Mexico. I invite all Americans to observe this year with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of January, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and sixteenth.



[FR Doc. 92–1133
Filed 1–10–92; 4:01 pm]
Billing code 3195–01–M

Rules and Regulations

Federal Register
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Tuesday, January 14, 1992

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 591 and 930

RIN 3206-AE37

Programs for Specific Positions and Examinations (Miscellaneous); Appointment, Pay, and Removal of Administrative Law Judges

AGENCY: Office of Personnel Management.

ACTION: Final regulations.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations governing the appointment, pay, and removal of administrative law judges (ALJ's), as required by section 104 of the Federal Employees Pay Comparability Act of 1990 (FEPCA), Public Law 101-509, enacted November 5, 1990. These regulations update and adopt interim regulations, published February 14, 1991, prescribing in which of three levels—AL-3, AL-2, or AL-1—each administrative law judge position shall be placed. These regulations also outline generally the qualifications required for appointment to each level of the new administrative law judge pay system. The regulations continue the basic thrust of previous regulations—to make administrative law judges largely independent in matters of tenure and compensation as required by the Administrative Procedure Act (APA) of 1946.

EFFECTIVE DATE: February 13, 1992.

FOR FURTHER INFORMATION CONTACT: C. Lee Willis, Assistant Director for Administrative Law Judges, (202) 606-0810 or (FTS) 266-0810.

SUPPLEMENTARY INFORMATION: On February 14, 1991, OPM published interim regulations establishing the new administrative law judge pay system (56 FR 6208). Interested parties were given until April 15, 1991, to submit written comments on the interim regulations.

Written comments were reviewed by OPM from 18 individual administrative law judges, one chief administrative law judge, two Members of Congress, and representatives of four administrative law judge associations, to wit, the Federal Administrative Law Judges Conference (FALJC), The Forum of U.S. Administrative Law Judges (Forum), the Association of Administrative Law Judges in the Department of Health and Human Services (Association of ALJ's), and the National Conference of Administrative Law Judges (NCALJ).

The comments generally supported the overall change in the administrative law judge pay system and regarded it as a long-awaited and needed change. The comments of the four groups are summarized below and are followed by a brief discussion on points and issues raised. All comments were reviewed and considered in preparing the final regulations.

1. Comments by Individual Administrative Law Judges

Most of the individual judges objected to the conversion provisions being made effective for all judges on the same date, with no credit being given for total time as an ALJ or time served in a certain step of the former General Schedule grade. There was, however, very little agreement as to how the individual judges should have been converted from the General Schedule pay system to the new administrative law pay system.

Several judges objected to OPM implementing the new pay system absent the usual comment and rule implementation step. The overriding concern among this small group of judges is that OPM elected to waive the general notice period of proposed rule-making and made the regulations effective at once rather than 30 days hence. This deprived one commenter of AL-3, rate B, upon conversion. He contended APA requires an effective date of not less than 30 days after publication of regulations.

Another judge contended that OPM erred in not observing the usual 30-day "waiting period" after publication of the interim regulations to implement the new ALJ pay system, contending that OPM did not show sufficient good cause in waiving the usual 30-day delay.

One judge contended she "lost" money because of the ALJ pay conversion. She stated that the final regulations should include the following language at § 930.210(k): "time already served in Step X as of date of conversion, February 10, by an incumbent GS-16 ALJ and converted under paragraph (k) of this section over and above the 104-week waiting period of General Schedule shall be creditable in the computation of the new AL-3 waiting period."

Two judges advocated an extra rate for hearing office chief judges above that allowed by a straight-line table conversion. This would be in recognition of additional hearing office chief administrative and managerial duties and responsibilities.

One judge suggested that § 930.210(e) be revised to delete the requirement that judges can "advance only one level at a time." As the regulations stand now, only AL-2 candidates, now numbering only about 15 to 17, can qualify for AL-1 positions.

Another judge suggested that all ALJ's be exempt from the dual compensation restrictions of the current law because a valuable resource is denied the ALJ corps in the form of retired military judges.

2. Comments by a Chief Administrative Law Judge

A chief administrative law judge objected to § 930.210(e). His concern was that the requirement to serve at least 1 year at AL-2 or equivalent level prior to promotion to AL-1 would result in an extremely small pool of candidates for AL-1 positions. He suggested that the statement, "unless OPM approves a waiver to this requirement," be added. He also believes the language of § 930.210(g)(1) is confusing as it might apply to reinstated judges because this language might allow reinstated judges to advance too quickly.

3. Comments by Administrative Law Judge Associations

FALJC offered several suggested additions and modifications to the interim pay regulations that it feels are necessary to ensure that the interim regulations fully comport with FEPCA. Some suggested changes pertain only to language requirements due to the change from GS to AL pay plans. Other suggested changes pertain directly to pay administration and include the following: (1) Delete § 930.210(e), which provides that "Judges must serve at least 1 year in each AL level, in an equivalent

or higher level in positions in the Federal service, before advancing to the next higher level and may advance only one level at a time." (2) Modify § 930.210(g)(1) and (2) to provide agencies with Senior Executive Service-type flexibility in hiring ALJ's.

Comments submitted by the Forum mirror almost to the word the comments submitted by FALJC, as synopsized just above and not reiterated here.

NCALJ contends that Congress, by passing FEPCA, intended to put an end to the pay disparity between GS–15 and GS–16 ALJ's and says that OPM has perpetuated this disparity by giving preferential treatment to those judges who achieved GS–16 status before conversion. NCALJ recommends that OPM change the interim regulations to provide for conversion of all judges from the former GS schedule to the new AL schedule on the basis of years of service as an ALJ rather than on the basis of grade/step as of February 10.

The Association of ALJ's advocates that the waiting period for all rates of AL–3 be uniform, i.e., the waiting period of 104 weeks from rate D to E and from rate E to F should be 52 weeks.

4. **Comments by Two Members of Congress**

One Member endorsed the comments by the Association of ALJ's, as synopsized just above, and forwarded those comments to OPM.

The other Member endorsed comments furnished by two Social Security Administration ALJ's. He further commented that the judges' suggestions would be more in line with the intent of Congress and fairer to all judges affected.

Response to Comments

In making a preliminary decision on the pay conversion plan for administrative law judges incorporated in the interim regulations published in the **Federal Register** on February 14, 1991, OPM carefully considered various issues, problems, and views, as described above. Comments received prior to the publication of the interim regulations were solicited on an informal level. These comments, as well as the comments summarized just above, were reviewed and given due consideration. With one exception, the final regulations do not deviate from the interim regulations. The aim was to follow congressional intent as much as possible by establishing a new pay system for administrative law judges that would be fair and equitable to the largest number of judges at the earliest practicable date and still be consistent with FEPCA provisions and long-standing personnel management practices regarding advancement. It is important to note that comments were received from only 18 of the more than 1,110 administrative law judges. It is also important to note that the primary concern expressed was the single date for conversion and that there was little agreement as to how we should have done the conversion. We believe we took the most even-handed approach that benefitted the most judges.

As previously published and duly noted, OPM found good cause existed for waiving the general notice of proposed rulemaking and for making the interim regulations effective in less than 30 days. To establish other than a single effective date for all administrative law judges would have created serious administrative problems. No one best-fit date could be reasonably determined. No one lost money under the conversion plan. Therefore, under the pay plan conversion schedule, administrative law judges were converted to the new pay system on the basis of their grade and step under the General Schedule on the effective date of conversion, the first day of the first pay period beginning on or after February 10, 1991—the earliest date allowed under Executive Order 12748. Applicable waiting periods for AL–3 advancement to higher rates were to begin upon appointment (assignment) to a position in AL–3 (Congressional Record—House, H–10701, October 20, 1990).

The new schedule ensured that each administrative law judge received a minimum increase of at least 8 percent above the scheduled rate in effect in 1990. As an earlier version of the pay plan considered by OPM was based on an anticipated General Schedule increase of 3.5 percent, the final conversion plan was revised upward to reflect the 4.1 percent increase ultimately approved. The final plan converted judges at certain steps of GS–15 and GS–16 to one rate higher than previously allowed. It was not possible to provide equal pay increases to all administrative law judges converted from 25 different pay rates under the General Schedule to 8 pay rates at 3 levels under the new AL pay system for administrative law judges. Some judges of necessity fared better than others as a result of the pay conversion being made effective on the earliest possible date benefitting, overall, the most judges.

As to the comments that hearing office chief judges should receive an extra rate of pay within the AL–3 level for additional managerial and administrative responsibilities performed, the final regulations provide that an agency may on a one-time basis, advance an AL–3 administrative law judge with added administrative and managerial responsibilities one rate beyond that allowed under current pay rates for AL–3, up to the maximum rate F.

We see no compelling reason to change the provision in § 930.210(e) that judges may advance only one level at a time. Such a requirement is consistent with the fact that three levels of work were established, and each level reflects more progressive managerial responsibility. Exemption of judges from the dual compensation restrictions of the current law is unnecessary because an amendment made by FEPCA now permits exceptions under appropriate circumstances.

Executive Order 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of Executive Order 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that within the scope of the Regulatory Flexibility Act these regulations will not have a significant economic impact on a substantial number of small entities because they affect only the personnel provisions under which Federal administrative law judges are appointed, paid, and employed.

List of Subjects

5 CFR Part 591

Government employees, travel and transportation expenses, wages.

5 CFR Part 930

Administrative practice and procedure, Government employees.

U.S. Office of Personnel Management.

Constance Berry Newman,

Director.

Accordingly, OPM's interim regulations under 5 CFR parts 591 and 930 published on February 14, 1991, at 56 FR 6208, are adopted as final with the following changes:

PART 930—PROGRAMS FOR SPECIFIC POSITIONS AND EXAMINATIONS (MISCELLANEOUS)

Subpart B—Appointment, Pay, and Removal of Administrative Law Judges

1. The authority citation for subpart B of part 930 continues to read as follows:

Authority: 5 U S.C. 1104(a)(2), 1305, 3105, 3323(b), 3344, 4301(2)(D), 5372, 7521

2. In § 930.210, paragraphs (h) through (l) are redesignated as (i) through (m), respectively; a new paragraph (h) is added to read as follows; and in the newly redesignated paragraph (k), the reference to "paragraph (k) of this section" is removed and replaced with a reference to "paragraph (l) of this section."

§ 930.210 Pay.

* * * * *

(h) Subject to the approval of OPM, and on the appropriate recommendation of the employing agency, an agency may on a one-time basis, advance an administrative law judge in a position at AL–3 with added administrative and managerial duties and responsibilities one rate beyond that allowed under current pay rates for AL–3, up to the maximum Rate F.

* * * * *

[FR Doc. 92–876 Filed 1–13–92; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1425

Cooperative Marketing Associations; Eligibility Requirements for Price Support

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The proposed rule published in the **Federal Register** on October 31, 1991 (56 FR 56031), to amend the regulations at 7 CFR part 1425 is adopted as a final rule. The adopted rule changes the regulations governing cooperative marketing associations to provide minimum financial requirements for cooperatives to be approved to participate in the price support program on behalf of their members with respect to canola, flaxseed, mustard seed, rapeseed, safflower, and sunflower seed. The adopted requirements are similar to those financial requirements for cooperative marketing associations marketing other commodities as specified in 7 CFR 1425.10.

EFFECTIVE DATE: January 14, 1992.

FOR FURTHER INFORMATION CONTACT: Richard M. Ackley, Chief, Cooperative and Analysis Branch; Cotton, Grain, and Rice Price Support Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013, 202–720–6689.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under U.S. Department of Agriculture (USDA) procedures in accordance with provisions of the Secretary's Memorandum No. 1512–1 and Executive Order 12291, and has been determined to be "not major" because these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, no Environmental Assessment or Environmental Impact Statement is needed.

The title and number of the Federal assistance program to which this proposed rule applies are: Title—Commodity Loans and Purchases—10.051; as found in the Catalog of Federal Domestic Assistance.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Regulations governing the eligibility of cooperative marketing associations to receive price support loans and purchases from CCC are set forth in 7 CFR part 1425. Those regulations, at 1425.10, provide minimum net worth requirements for cooperative marketing associations approved to participate in the price support program on behalf of their members. These net worth requirements previously did not include provisions for qualifying cooperatives for the marketing of canola, flaxseed, mustard seed, rapeseed, safflower, and sunflower seed. So that cooperative marketings of those crops would not be excluded from price support, a proposed rule was published on October 31, 1991 to add net worth provisions for those crops. The comment period ended on December 2, 1991; no comments were received. There appears no reason to modify the proposed rule as it applies to the matter of net worth. Accordingly the net worth provisions have been adopted as proposed with one grammatical change. In addition, the authority citation has been amended to more accurately reflect the statutory basis for these regulations.

Information collection requirements contained in this regulation (7 CFR part 1425) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control No. 0560–0040. Public reporting burden for the collection of information contained in this regulation is estimated to range from 30 minutes to 16 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0560–0040), Washington, DC 20503.

List of Subjects in 7 CFR Part 1425

Cooperatives, Price support programs, Reporting and recordkeeping requirements, Financial requirements.

Final Rule

Accordingly, 7 CFR part 1425 is amended as follows:

PART 1425—COOPERATIVE MARKETING ASSOCIATIONS

1. The authority citation for 7 CFR part 1425 is revised to read as follows:

Authority: 7 U.S.C. 1421 *et seq.*; 15 U.S.C. 714b, 714c, and 714j.

2. 7 CFR 1425.10(b)(3) is revised to read as follows:

§ 1425.10 Financial condition.

* * * * *

(b) * * *

(3)(i) *The net worth of the cooperative.* The cooperative shall be considered to have a sufficient net worth if such net worth is equal to the product of an amount per unit for a commodity (as set forth in table 1) multiplied by the total number of units of such commodity handled by the cooperative during the preceding marketing year, or, if the cooperative is in its first full marketing year of

operations, the estimated quantity of such commodity that it will handle during such year. If a cooperative has not been approved to participate in a price support program for each of three crop years immediately preceding the crop year for which approval is being considered, CCC may establish the unit total of a commodity to be used in determining the sufficiency of the cooperative's net worth.

(ii) If the amount of the net worth of the cooperative is between 34 and 99 percent of the amount computed in accordance with paragraph (b)(3)(i) of this section and the cooperative is determined by CCC to be otherwise financially sound, CCC may determine that the operation of the cooperative is being carried out in a financially sound basis. Such a determination by CCC may be made if (A) the board of directors of the cooperative agrees to make a capital retain in the amount set forth in Table 2 with respect to each unit of the commodity delivered to the cooperative until the net worth of the cooperative is at least equal to the amount computed in accordance with paragraph (b)(3)(i) of this section and (B) the cooperative agrees to deduct from pool proceeds the full amount of the estimated expenses of handling the commodities received by the cooperative. The failure to carry out such agreements shall be grounds for terminating a cooperative's approval.

TABLE 1

Commodity	Unit	Amount per unit
Barley	Bushel	.13
Canola	Hundredweight	.62
Corn	Bushel	.13
Cotton	Bale	6.40
Flaxseed	Hundredweight	.62
Honey	Hundredweight	1.90
Mustard Seed	Hundredweight	.62
Oats	Bushel	.13
Rapeseed	Hundredweight	.62
Rice	Hundredweight	.52
Rye	Bushel	.13
Safflower	Hundredweight	.62
Seed Cotton (lint basis).	Pounds	.008
Sorghum	Hundredweight	.19
Soybeans	Bushel	.43
Sunflower Seed	Hundredweight	.62
Wheat	Bushel	.15

TABLE 2

Commodity	Unit	Amount per unit
Barley	Bushel	.07
Canola	Hundredweight	.32
Corn	Bushel	.07
Cotton	Bale	3.20
Flaxseed	Hundredweight	.32
Honey	Hundredweight	.95

TABLE 2—Continued

Commodity	Unit	Amount per unit
Mustard Seed	Hundredweight	.32
Oats	Bushel	.07
Rapeseed	Hundredweight	.32
Rice	Hundredweight	.26
Rye	Bushel	.07
Safflower	Hundredweight	.32
Seed Cotton (lint basis).	Pounds	.004
Sorghum	Hundredweight	.10
Soybeans	Bushel	.22
Sunflower Seed	Hundredweight	.32
Wheat	Bushel	.08

* * * * *

Signed this 8th day of January 1992, in Washington, DC.

Keith D. Bjerke,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 92-918 Filed 1-13-92; 8:45 am]

BILLING CODE 3410-05-M

Farmers Home Administration

7 CFR Part 1955

Conveyance of Single Family Housing Security Property by Deed in Lieu of Foreclosure

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: Farmers Home Administration (FmHA) amends its regulations on the conveyance of Single Family Housing (SFH) security property. FmHA will consider a borrower's offer to convey security property to the Government by deed in lieu of foreclosure only after the account is accelerated. When an offer is made, the borrower will be advised of the assistance FmHA can provide with sale of the property, and of the consequences of a conveyance by deed in lieu of foreclosure. FmHA will accept the offer only when it is in the government's interest, will credit the account with the market value of the property less any prior liens and, if the debt is not satisfied, will not automatically release the borrower of liability. Any unpaid balance will be handled according to formal debt settlement procedures. If the value of the property does not appear adequate to retire the debt, FmHA will require a budget and/or financial statement and, if necessary to confirm the existence of other assets, a search of public records to facilitate the debt settlement process. This action is taken to encourage voluntary liquidation of problem loans, maximizing potential equity realization and minimizing negative credit implications for the borrower, while assuring the maximum recovery to the Government and reducing the incidence of Government acquisition of security property and the resulting costs of holding and disposition.

EFFECTIVE DATE: February 13, 1992.

FOR FURTHER INFORMATION CONTACT: Joyce M. Halasz, Senior Realty Specialist, Property Management Branch, Single Family Housing Servicing and Property Management Division, Farmers Home Administration, U.S. Department of Agriculture, room 5307, South Agriculture Building, 14th Street and Independence Avenue, SW., Washington, DC 20250, telephone (202) 720-1452.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures in Departmental Regulation 1512-1, which implements Executive Order 12291 and has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers, individual industries, Federal, State or local Government agencies, or geographic regions. Furthermore, there will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or import markets. This action is not expected to substantially affect budget outlay or affect more than one agency or to be controversial. The net result is to provide better service to rural communities.

Background/Discussion

The Office of Inspector General (OIG) in Audit No. 04663-02-CH, Cash and Debt Management Activities, made recommendations to minimize FmHA's losses from SFH borrowers who liquidate their loans by conveyance of security property to the Government when the market value is less than the debt and to clarify policy on consideration and acceptance of conveyances to reduce Government acquisition of security property. A proposed rule was published in the **Federal Register**, 56 FR 19622, on Monday, April 29, 1991. The comment period ended June 28, 1991. Eleven (11) comments were received; eight (8) from FmHA employees, two (2) from legal services organizations and one (1) from

a low-income housing advocacy group. The comments were on the following issues:

I. Consideration of a Borrower's Offer to Convey SFH Security Property by Deed in Lieu of Foreclosure Only After Acceleration of the Debt

In the past, FmHA regulations have given a borrower a limited right to offer to convey security property to the government at any time the borrower no longer wanted the security property or was unable to make the payments. The prior regulation lacked a means to give a borrower an incentive to pursue voluntary liquidation. The prior regulation provided no objective basis for FmHA to determine when it is appropriate to consider a borrower's offer to convey by deed in lieu of foreclosure. This has resulted in a lack of emphasis on voluntary liquidation of problem loans. In addition, the ease with which FmHA has accepted deeds in lieu of foreclosure has contributed to a large inventory of unsold houses with the consequent high cost of maintaining and selling this inventory. In order to ensure that every effort is made to encourage voluntary liquidation and to establish an objective criterion, FmHA will not consider a borrower's offer to convey security property by a deed in lieu of foreclosure until the debt is accelerated.

Ten of the eleven comments received were opposed to strict adherence to the acceleration requirement. Most suggested exceptions, alternative criteria, or some degree of approving official discretion. Others suggested a specific sale requirement, such as a minimum 90-day listing with a licensed real estate broker at market value. Exceptions to the requirement, such as when a borrower is moving out of the area or experiencing a problem with the house or lot beyond the borrower's control, are not appropriate when voluntary liquidation remains an alternative.

Although a deed to the Government may appear expedient when compared to the alternative of a lengthy and costly foreclosure, the borrower's sale of the property is preferable to Government acquisition when the costs of property management and disposition are taken into consideration. FmHA considered requiring the borrower to attempt to sell the property before considering a deed in lieu; however, FmHA has no means of enforcing such a requirement. Under 7 CFR, part 1965, subpart C, FmHA encourages voluntary liquidation through sale of the property, allowing the borrower a minimum of 120 days to sell the property or otherwise pay the account in full. In some cases, FmHA consents to sale (at market value) for less than the debt, paying for authorized selling expenses and settling the remaining debt under 7 CFR part 1956, subpart B, if the borrower is unable to pay. In a sale for less than the debt, the borrower receives no equity. When the borrower has nothing to gain in making the effort to sell a house in which he or she is no longer interested and in which he or she has no equity, it becomes necessary to emphasize the negative aspects of forced liquidation, in order to encourage the borrower's sale of the property. The acceleration requirement will stress the negative impact of forced liquidation and assure that all voluntary liquidation efforts, including refinancing with another lender or sale of the security property, have been diligently pursued, short of foreclosure action. This action wil make it clear that both the borrower and FmHA must exhaust all servicing options and efforts at voluntary liquidation before it is appropriate to consider a conveyance by deed in lieu of foreclosure. The terminology alone is a clear indicator of when the action is appropriate.

One commenter expressed consern that FmHA was encouraging borrowers to sell property that may not meet DSS standards and thereby was not meeting the intent of section 510(g) of the Housing Act of 1949, as amended. The commenter correctly noted that the cited section does not apply to a borrower's sale of security property. FmHA is not a party to such a sale of the security property and therefore has no authority to place conditions or restrictions on the sale. It should be noted however, that, if FmHA finances a transfer to an eligible buyer, necessary repairs are required and may be financed with a subsequent loan.

II. Satisfaction of the Debt and Release of Liability When FmHA Accepts a Conveyance

Three comments suggested that FmHA had misinterpreted the intent of an amendment to § 510(c) of the Housing Act of 1949. To clarify, the Housing and Community Development Act of 1987, Public Law 100–242 (Feb. 5, 1988), cured certain defects in § 510 of the Housing Act of 1949, providing the Secretary of Agriculture with broad authority to set the terms by which a rural housing borrower is released from liability *at the time of debt settlement* (emphasis added). The amendment eliminated anachronistic language from the original Housing Act of 1949, which required a borrower to have "farmed in a workmanlike manner" before a release of liability for an undersecured debt was authorized. It also expanded the debt settlement provisions to include all housing programs, since authority to settle certain Housing Act programs had been limited by the Food Security Act of 1985. The amendment allowed a more prudent approach to the handling of a deed in lieu of foreclosure, whereby a release of liability is not automatic, but must take place in a debt settlement context. While this is a change from current policy, it is consistent with the language of section 510(c). There is nothing in section 510(c) which indicates that FmHA must cancel the debt of a borrower who can pay an unpaid balance after a deed in lieu has been accepted by FmHA, only that FmHA is authorized to cancel the unpaid balance through the debt settlement process. If a borrower does not have the resources or prospects of having resources in the future to satisfy any unpaid balance, then the borrower's debt will be cancelled pursuant to FmHA's debt settlement process, 7 CFR part 1956, subpart B. On the other hand, if a borrower has some assets from which all or part of the unpaid balance could be satisfied, then the borrower will be expected to pay the remainder of the debt, but will still be eligible for compromise or adjustment under the debt settlement regulation. A statement will be added to § 1955.10(f)(1) which will clarify the handling of any unpaid balances.

The same three comments also indicated a concern that the policy of pursuing unpaid balances was contrary to section 505(a) of the Housing Act of 1949, which precludes FmHA from seeking a deficiency judgment in a foreclosure of a borrower who has been granted a moratorium if the borrower has faithfully tried to meet his or her obligations. We agree that this protection afforded such a borrower should extend to other forms of liquidation, including that of a conveyance by deed in lieu of foreclosure; therefore, a statement will be added to clarify this intent.

III. Budget and/or Financial Statement Requirement

Any release of liability after a conveyance resulting in a deficiency would be based on an approved debt settlement. Therefore, when the market value of a property appears to be less than the debt, a deficiency is likely, and FmHA will need to obtain and fully consider information about the borrower's financial condition to determine appropriate debt settlement action. FmHA may also need a search of public records if it is determined

necessary to discover suspected undisclosed assets. No comments were received regarding the requirement of a financial statement for a borrower and, if necessary to discover suspected undisclosed assets, a search of public records, when an offer to convey involves security property valued at less than the debt.

Programs Affected

Ths SFH program is listed in the Catalog of Federal Domestic Assistance under No. 10.410—Low Income Housing Loans and No. 10.417—Very Low Income Housing Repair Loans and Grants. For the reasons set forth in the Final Rule related Notice(s) to 7 CFR part 3015, subpart V, this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not directly involve small entities nor does it add or remove any authorities which would affect small entities.

List of Subjects in 7 CFR Part 1955

Foreclosure, Government acquired property.

Therefore, chapter XVIII of title 7, Code of Federal Regulations, is amended as follows:

PART 1955—PROPERTY MANAGEMENT

1. The authority citation for part 1955 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

2. § 1955.10 is amended by revising paragraph (d)(3) and the introductory text of paragraph (f)(1) to read as follows:

§ 1955.10 Voluntary conveyance of real property by the borrower to the Government.

* * * * *

(d) * * *

(3) A current financial statement containing information similar to that required to complete Forms FmHA 410–1, "Application for FmHA Services" or FmHA 442–3, "Balance Sheet," and information on present income and potential earning ability. Exception for SFH loans: FmHA requires a budget and/or financial statement and, if necessary to discover suspected undisclosed assets, a search of public records, only when the value of the security property may be less than the debt.

* * * * *

(f) * * *

(1) *SFH loans.* FmHA does not solicit or encourage conveyance of SFH security property to the Government and will consider a borrower's offer to convey by deed in lieu of foreclosure only after the debt is accelerated and when it is in the Government's interest. Upon receipt of an offer to convey, the servicing official will remind the borrower of provisions for voluntary liquidation under § 1965.125(a) of subpart C of part 1965 of this chapter, and the consequences of a conveyance by deed in lieu of foreclosure as follows: All costs related to the conveyance which FmHA pays will be added to the debt; a credit equal to the market value of the property, as determined by FmHA, less prior liens, will be applied to the debt; and if the credit does not satisfy the debt, the borrower will not automatically be released of liability. The unsatisfied debt, after acceleration under § 1955.10(h)(5) of this subpart, may be settled according to subpart B of part 1956 of this chapter; however, a deficiency judgment will not be pursued when the borrower was granted a moratorium if the borrower faithfully tried to meet loan obligations. The conveyance is processed as follows:

* * * * *

3. Section 1955.50 is revised to read as follows:

§ 1955.50 OMB control number.

The collection of information requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) and have been assigned OMB control number 0575–0109. Public reporting burden for this collection of information is estimated to vary from 5 minutes to 5 hours per response, with an average of .56 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB #0575–0109), Washington, DC 20503.

Dated: December 18, 1991.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 92–920 Filed 1–13–92; 8:45 am]

BILLING CODE 3410–07–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 5 and 31

Fees for Applications for Contract Market Designation, Leverage Commodity Registration and Registered Futures Association and Exchange Rule Enforcement and Financial Reviews

AGENCY: Commodity Futures Trading Commission.

ACTION: Final schedule of fees.

SUMMARY: The Commission periodically adjusts fees charged for certain program services to assure that they accurately reflect current Commission costs. In this regard, the staff recently reviewed the Commission's actual costs of processing applications for contract market designation (17 CFR part 5, appendix B), registration of leverage commodities (17 CFR part 31, appendix A) and registered futures association and exchange rule enforcement and financial reviews (17 CFR part 1). The following fee schedule for FY 1992 reflects the costs to the Commission of providing those services during fiscal years 1989, 1990 and 1991. The fee for applications for contract market designation for futures would be maintained at $15,000, a reduced fee for contract market designation for options at $7,000 would be established, the

Commission will create an incentive for contract markets to simultaneously submit designation applications for futures and options on that future by charging a combined fee of $17,000 for both, and the fee for leverage commodity registration will remain at $4,500. The Commission also is publishing its schedule of annual fees for rule enforcement, sales practice and financial reviews of exchanges and registered futures association.

EFFECTIVE DATES: Contract Market Designation and Leverage Commodity Registration: January 14, 1992. Registered Futures Association and Exchange Rule Enforcement and Financial Reviews: March 16, 1992.

FOR FURTHER INFORMATION CONTACT: Gerry Smith, Special Assistant to the Executive Director, Office of the Executive Director, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, telephone number 202–254–6090.

SUPPLEMENTARY INFORMATION: The Commission periodically reviews the actual costs of providing services for which fees are charged and adjusts its fees accordingly. In connection with its most recent review, the Commission has determined that fees for contract market designations should be adjusted. Also, this release announces the FY 1992 schedule of fees for registered futures association and exchange rule enforcement and financial reviews and maintains leverage commodity registration fees.

I. Computation of Fees

In accordance with the Futures Trading Act of 1982 (7 U.S.C. 16a) the Commission has established fees for certain activities and functions performed by the Commission.[1] In calculating the actual cost of processing applications for contract market designation, registering leverage commodities, and performing registered futures association and exchange rule enforcement and financial reviews, the Commission takes into account personnel costs, benefits and administrative costs.

The Commission first determines personnel costs by extracting data from the agency's Budget Account Code (BAC) system. Employees of the Commission record the time spent on each project under the BAC system. The Commission then adds an overhead factor for benefits, including retirement, insurance and leave, based on a government-wide standard established by the Office of Management and Budget in Circular A–76. An overhead factor is also added for general and administrative costs, such as space, equipment and utilities. These general and administrative costs are derived by computing the percentage of Commission appropriations spent on these non-personnel items. The overhead calculations fluctuate slightly due to changes in government-wide benefits and in the percentage of Commission appropriations applied to non-personnel costs from year to year. The actual overhead factor for the preceding fiscal years is as follows: FY 1989—100%; FY 1990—98%; FY 1991—94%.

Once the total personnel costs and overhead for each project have been determined, the costs for FY 1989, FY 1990 and FY 1991 are averaged. This results in a calculation of the average annual cost for each project over the three-year period, which is the basis for the fee.

II. Applications for Contract Market Designation

On August 23, 1983 the Commission established a fee for Contract Market Designation. 48 FR 38214. This fee was based upon a three year moving average of the actual costs expended and the number of contracts reviewed in that period of time. The fee charged was reviewed again in FY 1985 and every year after that to determine the fee for the current year. At that time the overwhelming majority of designation applications was for futures contracts as opposed to options contracts. Therefore, the proposed fee covered both futures and options applications. The Commission has now reviewed its data on the actual costs for reviewing applications for both futures and options and has determined that the cost of reviewing a futures contract is much higher than the cost of reviewing an options contract. It has also determined that, when both a futures contract and an option on that futures contract are submitted simultaneously, the cost for review of that options contract is even lower. A review of actual costs of processing applications for contract market designation as a future for FY 1989, FY 1990 and FY 1991 revealed that the average cost over the three year period was $15,636. A review of actual costs of processing applications for contract market designation as an option for FY 1989, FY 1990 and FY 1991 revealed that the average costs over the three year period was $7,397. Therefore, the fee for applications for contract market designation as a future will be maintained at $15,000. The fee for applications for contract market designation as an option will be lowered to $7,000 in accordance with the Commission's regulations (17 CFR part 5, appendix B). In addition, the combined fee for contract markets submitting designation applications for futures and options on that future simultaneously will be set at $17,000. The Commission has determined that in order to provide an incentive for simultaneous submission of a future and an option on that future, this significant reduction from the $22,000 fee ($30,000 for both in FY 1991) that would otherwise be required for such submissions is appropriate.

III. Leverage Commodity Registration

No new applications for leverage commodity registration were received by the Commission in FY 1991. Accordingly, the Commission will maintain the present fee of $4,500 for leverage commodity registration.

IV. Registered Futures Association and Exchange Rule Enforcement and Financial Reviews

Exchange	Actual average costs FY 1989–FY 1991	FY 1992 fee
Chicago Board of Trade	$214,718	$214,718
Chicago Mercantile Exchange	171,422	171,422
Commodity Exchange, Inc.	120,366	120,366
Coffee, Sugar & Cocoa Exchange	98,417	98,417
New York Mercantile Exchange	96,247	96,247
New York Cotton Exchange	64,757	64,757
Kansas City Board of Trade	55,161	55,161
New York Futures Exchange	105,999	105,999
Minneapolis Grain Exchange	69,004	69,004
Philadelphia Board of Trade	6,280	6,280
Amex Commodities Corp.	333	333
National Futures Association	353,049	353,049
Total	1,355,753	1,355,753

As in the calculation of the FY 1990 and FY 1991 fees, the FY 1992 fee for the Chicago Board of Trade includes the fees for the MidAmerica Commodity Exchange and the Chicago Rice and Cotton Exchange. (The Chicago Rice and Cotton Exchange merged with the MidAmerica Commodity Exchange in early November, 1991).

[1] For a broader discussion of the history of Commission fees, see 52 FR 46070 (Dec. 4, 1987).

V. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et. seq.*, requires that agencies consider the impact of those rules on small businesses. The fees implemented in this release affect contract markets (also referred to as "exchanges") and registered futures associations. The Commission has previously determined that contract markets and registered futures associations are not "small entities" for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, 47 FR 18618 (April 30, 1982). Therefore, the requirements of the Regulatory Flexibility Act do not apply to contract markets or registered futures associations. Accordingly, the Chairman, on behalf of the Commission, certifies that the fees implemented herein do not have a significant economic impact on a substantial number of small entities.

Issued in Washington, DC on January 8, 1992, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92-809 Filed 1-13-92; 8:45 am]

BILLING CODE 6351-01-M

17 CFR Part 30

Option on the Italian Government Bond Futures Contract Traded on the London International Financial Futures Exchange

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is authorizing option contracts on the Italian Government Bond ("BTP") Futures Contract traded on the London International Financial Futures Exchange ("LIFFE") to be offered or sold to persons located in the United States. This Order is issued pursuant to: (1) Commission rule 30.3(a), 17 CFR 30.3(a) (1991), which makes it unlawful for any person to engage in the offer or sale of a foreign option product until the Commission, by order, authorizes such foreign option to be offered or sold in the United States; and (2) the Commission's Order issued on September 5, 1989, 54 FR 37636 (September 12, 1989), authorizing certain option products traded on LIFFE to be offered or sold in the United States.

EFFECTIVE DATE: January 14, 1992.

FOR FURTHER INFORMATION CONTACT: Barney L. Charlon, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-8955.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

United States of America Before the Commodity Futures Trading Commission

Order Under Commission Rule 30.3(a) Authorizing Option Contracts on the Italian Government Bond Futures Contract Traded on the London International Financial Futures Exchange to be Offered or Sold in the United States Immediately upon Publication of this Notice in the Federal Register

By Order issued on September 5, 1989 ("Initial Order"), the Commission authorized, pursuant to Commission rule 30.3(a),[1] certain option products traded on the London International Financial Futures Exchange ("LIFFE") to be offered or sold in the United States. 54 FR 37636 (September 12, 1989). Among other conditions, the Initial Order specified that:

> Except as otherwise permitted under the Commodity Exchange Act and regulations thereunder, * * * no offer or sale of any LIFFE option product in the United States shall be made until thirty days after publication in the **Federal Register** of notice specifying the particular option(s) to be offered or sold pursuant to this Order * * *.

By letter dated October 22, 1991, LIFFE represented that it would commence trading an option contract based on the Italian Government Bond ("BTP") futures contract on October 24, 1991. LIFFE has requested that the Commission supplement its Initial Order authorizing Options on the Long Gilt futures contract, Options on the U.S. Treasury Bond futures contract, Options on the German Government Bond futures contract, Options on the 3-Month Sterling Interest Rate futures contract, Options on the 3-Month Eurodollar Interest Rate futures contract, Options on the 3-Month Euro-Deutschemark Interest Rate futures contract, and Options, on Sterling and Dollar-Mark currencies by also authorizing LIFFE's Option Contract on the BTP futures contract to be offered or sold to persons in the United States. Upon due consideration, and for the reasons previously discussed in the Initial Order, the Commission believes that such authorization should be granted.[2]

Accordingly, pursuant to Commission rule 30.3(a) and the Commission's Initial Order issued on September 5, 1989, and subject to the terms and conditions specified therein, the Commission hereby authorizes LIFFE's Option Contract on the BTP futures contract to be offered or sold to persons located in the United States immediately upon publication of this Order in the **Federal Register.**[3]

Option on Italian Government Bond ("BTP") Future

Unit of trading—1 BTP futures contract.

Delivery/expiry months—March, June, September, December.

Exercise day/delivery day/expiry day—Exercise by 17.00 on any business day extended to 18.30 on Last Trading Day. Delivery on the first business day after the exercise day. Expiry at 18.30 on the Last Trading Day.

Last trading day—Seven business days prior to first day of the delivery month.

Quotation—Multiples of ITL 0.01.

Minimum price movement (tick size & value)—ITL 0.01 (ITL 20,000).

Trading hours—08.02-16.05 London time.

Contract standard—Assignment of 1 BTP futures contract for the delivery month at the exercise price.

Exercise price intervals—ITL 0.50 e.g. 95.00, 95.50 etc.

Introduction of new exercise prices—Nine exercise prices will be listed for new series. Additional exercise prices will be introduced on the business day after the BTP futures contract settlement price is within ITL 0.25 of the fourth highest or lowest existing exercise price.

Option price—The contract price is payable by the buyer to the seller on exercise or expiry of the option, not at the time of purchase. Positions are marked to market daily.

Initial listing—As of 24th October 1991, options will be listed on the

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[1] Commission rule 30.3(a), 17 CFR 30.3(a) (1991), makes it unlawful for any person to engage in the offer or sale of a foreign option product until the Commission, by order, authorizes such foreign option to be offered or sold in the United States.

[2] *See* section 2a(1) of the Commodity Exchange Act, section 3(a)(12) of the Securities Exchange Act of 1934 ("34 Act") and rule 3a12-8 promulgated thereunder. On January 8, 1992, the Securities and Exchange Commission designated the government debt securities of the Government of Italy as exempted securities for purposes of the 34 Act's application to the marketing in the United States of futures contracts on those securities.

[3] On November 14, 1991, the Commission issued a Notification of Proposed Order under Rule 30.3(a) permitting option contracts on the BTP futures contract traded on LIFFE to be offered or sold in the United States. 56 FR 58527. The Notification of Proposed Order was published in the **Federal Register** consistent with the Initial Order's 30-day notice requirement.

December 1991 and March 1992 delivery months.

List of Subjects in 17 CFR Part 30

Commodity futures, Commodity options, Foreign commodity options.

Accordingly, 17 CFR part 30 is amended as set forth below:

PART 30—FOREIGN FUTURES AND FOREIGN OPTION TRANSACTIONS

1. The authority citation for part 30 continues to read as follows:

Authority: Secs. 2(a)(1)(A), 4, 4c, and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 6, 6c and 12a.

2. Appendix B to part 30 is amended by adding the following entry alphabetically after the existing entry for "London International Financial Futures Exchange" to read as follows:

Appendix B—Option Contracts Permitted to be Offered or Sold in the U.S. Pursuant to § 30.3(a)

Exchange	Type of contract	FR date and citation
* * * * *		
London International Financial Futures Exchange.	Option contract on Italian Government bond futures contract.	92; FR
* * * * *		

Issued in Washington, DC on January 9, 1992.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92-906 Filed 1-13-92; 8:45 am]

BILLING CODE 6351-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Docket No. 34-30166, International Series Release No. 357, File No. S7-32-91]

RIN 3235AEZZ

Designation of the Securities of Certain Foreign Governments as Exempted Securities Under the Securities Exchange Act of 1934 Solely for Purposes of Trading Futures Contracts on Those Securities

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission adopts three amendments to Rule 3a12-8 (17 CFR 240.3a12-8) ("Rule") under the Securities Exchange Act of 1934 ("Exchange Act"). The first amendment designates debt obligations issued by the Republics of Ireland and Italy as "exempted securities." The purpose of this amendment is to permit the marketing and trading of futures contracts on those securities in the United States or to U.S. persons. The second amendment replaces the reference to "West Germany" in the Rule with a reference to the "Federal Republic of Germany" to reflect the re-unificaion of East Germany and West Germany. The third amendment replaces all references to the informal names of the countries listed in the Rule with references to their official names to clarify the references made to countries in the Rule. The changes made by the second and third amendments will not result in a substantive change in the operation of the Rule.

EFFECTIVE DATE: January 14, 1992.

FOR FURTHER INFORMATION CONTACT: Monica C. Michelizzi, Esq., Branch of Options Regulation, Division of Market Regulation, Securities and Exchange Commission (Mail Stop 5-1), 450 Fifth Street, NW., Washington, DC 20549, at 202/272-2411.

SUPPLEMENTARY INFORMATION:

I. Introduction

Under the Commodity Exchange Act ("CEA"), it is unlawful to trade a futures contract on any individual security, unless the security in question is an exempted security (other than a municipal security) for the purposes of the Securities Act of 1933 ("Securities Act") for the Exchange Act.[1] Debt obligations of foreign governments are not exempted securities under either of these statutes. The Securities and Exchange Commission ("SEC" or "Commission"), however, has authority to designate securities as exempted securities for purposes of the Exchange Act.

In order to facilitate the trading of futures contracts on debt securities of certain foreign governments by United States persons, the Commission has adopted rule 3a12-8 (17 CFR 240.3a12-8) under the Exchange Act to designate debt obligations issued by certain foreign governments as exempted securities under the Exchange Act solely for the purpose of marketing and trading futures contracts on those securities in the United States or to U.S. persons.[2] Currently, the foreign governments listed in the Rules are Great Britain, Canada, Japan, Australia, France, New Zealand, Austria, Denmark, Finland, the Netherlands, Switzerland, and West Germany (the "twelve designated countries"). As a result, futures contracts on the debt obligations of these countries may be sold to U.S. persons, as long as the other terms of the Rule are satisfied.[3]

On November 12, 1991, the Commission issued a release proposing to amend rule 3a12-8 to designate the debt obligations of the Republics of Ireland and Italy as exempt securities, solely for the purpose of futures trading, to change the country designation of "West Germany" to the "Federal Republic of Germany," and to change the names of the other countries designated in the rule to their formal names. The Commission received no comments in response to this proposal.[4]

The Commission today adopts these three amendments to the Rule. First, the amendments add the debt obligations of the Republics of Ireland and Italy (the "two newly-designated countries") to the list of countries whose debt obligations are exempted by rule 3a12-8. In order to qualify for the exemption, futures contracts on debt obligations of the two newly-designated countries would have to meet all the other existing requirements of the Rule. Second, the amendments change the country designation of "West Germany" to the "Federal Republic of Germany" to reflect the re-unification of Germany and the subsequent adoption of the name the "Federal Republic of Germany" as the official name of the unified country.[5] Third, the amendments replace all references to the informal names of the countries listed in the Rule with references to their official names.

II. Background

Section 2(a)(1)(B)(v) of the CEA,[6] which was adopted as part of the

[1] The term "exempted security" is defined in section 3 of the Securities Act, 15 U.S.C. 77c, and section 3(a)(12) of the Exchange Act, 15 U.S.C. 78c(a)(12).

[2] Under the Rule, the grading of futures on government securities exempted by the Rule is permitted only on or through a board of trade.

[3] *See infra* note 14 and accompanying text for a discussion of the other terms of the Rule that must be satisfied in order for these contracts to be marketed or traded in the United States.

[4] *See* Securities Exchange Act Release No. 29929 (Nov. 12, 1991), 56 FR 58194 (November 19, 1991) ("Proposal Release").

[5] In an interpretive letter to the Chicago Board of Trade ("CBOT") regarding a proposed futures contract on German government bonds, the Commission's Division of Market Regulation has stated that it interprets the reference to "West Germany" in the Rule to mean the "Federal Republic of Germany" for purposes of the Rule. *See* letter from Brandon Becker, Deputy Director, Division of Market Regulation, SEC, to William Cullen, Senior Attorney, CBOT, dated July 23, 1991.

[6] 7 U.S.C. 2(a).

Futures Trading Act of 1982,[7] provides that it is unlawful to trade a futures contract on an individual security unless that security is an exempted security under Sections 3 of the Securities Act or section 3(a)(12) of the Exchange Act.[8] These sections of the Securities Act and the Exchange Act explicitly designate certain securities, including government securities and municipal securities, as exempted securities. Securities issued by foreign governments, however, are not "government securities" within the meaning of the federal securities statutes.[9] Therefore, securities issued by foreign governments are not deemed to be exempted securities under the statutory language.

Section 3(a)(12) of the Exchange Act, however, provides the Commission with the authority to designate other securities as exempted securities, either unconditionally or for specified purposes.[10] Rule 3a12–8 was adopted in 1984 [11] pursuant to this exemptive authority in order to facilitate the trading of futures contracts on securities of foreign governments by United States person.[12] As originally adopted, the Rule provided that debt obligations of Canada and of the United Kingdom of Great Britain and Northern Ireland would be deemed to be exempted securities, solely for the purpose of permitting the offer, sale, and confirmation of "qualifying foreign futures contracts" on such securities, so long as the securities in question were neither registered under the Securities Act nor the subject of any American Depositary Receipt so registered. A futures contract on such a debt obligation is deemed under the Rule to be a "qualifying foreign futures contract" if delivery under the contract is settled outside the United States and is traded on a board of trade.[13]

The conditions imposed by the rule were intended to facilitate the trading of futures contracts on foreign government securities without sacrificing the longstanding policy under the federal securities laws of requiring foreign government securities to comply with the basic requirements of the federal securities laws in order to be marketed and traded in the United States. Accordingly, the conditions set forth in the rule were designed to ensure that, absent registration, a domestic market in foreign government securities would not develop, and that markets for futures on these instruments would not be used to avoid the registration requirements and other provisions of the federal securities laws.

At the time the Commission originally proposed rule 3a12–8, it recognized that the rule might need to be amended at some later date in order to extend its provision to debt obligations of other foreign governments.[14] Subsequently, the Commission amended the rule to include debt obligations issued by Japan, Australia, France, New Zealand, Austria, Denmark, Finland, the Netherlands, Switzerland, and West Germany within its coverage.[15]

Rule 3a12–8 has not been amended since 1988. Since that time, an Irish Government futures contract has been developed and has begun trading on the Irish Futures and Options Exchange ("IFOX").[16] The London International Financial Futures Exchange ("LIFFE") also has begun trading a futures contract on Italian government bonds.[17] In addition, the CBOT and the LIFFE have applied to the CFTC for designation as a contract market for trading in futures contracts on European Currency Unit-denominated debt securities ("ECU bonds") issued by, among others, certain foreign governments, including the government of Italy.[18] The Commission has been informed that U.S. citizens, especially institutional investors, may be interested in trading these new products, and has received requests that rule 3a12–8 be amended to facilitate such trading.[19]

The Commission today amends rule 3a12–8 to add the Republics of Italy and Ireland to the list of countries whose debt obligations already are deemed to be "exempted securities" under the terms of the rule. Under this amendment, the existing conditions set forth in the rule (*i.e.*, that the underlying securities not be registered in the United States, that the futures contracts require delivery outside the United States, and

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[7] Pub. L. No. 97–444, 96 Stat. 2294, 7 U.S.C. 1 *et seq.*

[8] Section 2(a)(1)(B)(v) of the CEA, 7 U.S.C. 2a(v), provides that "[n]o person shall offer to enter into, enter into, or confirm the execution of any contract of sale (or option on such contract) for future delivery of any security or interest therein or based on the value thereof, except an exempted security under section 3 of the Securities Act * * * or section 3(a)(12) of the (Exchange Act) * * *."

[9] *See* Section 3(a)(42) of the Exchange Act, 15 U.S.C. 78c(a)(42) (defining the term "government security" for purposes of the Exchange Act).

[10] Section 3(a)(12) of the Exchange Act provides that the term "exempted security" includes "such other securities * * * as the Commission may by such rules and regulations as it deems consistent with the public interest and the protection of investors, either unconditionally or upon specified terms and conditions or for stated periods, exempt from the operation of any one or more provisions of this title which by their terms do not apply to an 'exempted security' or to exempted securities.' " 15 U.S.C. 78c(a)(12).

[11] *See* Securities Exchange Act Release Nos. 20708 ("Adopting Release") (March 2, 1984), 49 FR 8595 (March 8, 1984) and 19811 ("Proposing Release") (May 25, 1983), 48 FR 24725 (June 2, 1983).

[12] The marketing and trading of foreign futures contracts to United States persons is subject to regulation by the CFTC. In particular, Section 4b of the CEA authorizes the CFTC to regulate the offer and sale of foreign futures contracts to United States persons, and rule 9 (17 CFR 30.9), promulgated under section 2(a)(1)(A) of the CEA, is intended to prohibit fraud in connection with the offer and sale to United States persons of futures contracts executed on foreign exchanges. Additional rules promulgated under 2(a)(1)(A) of the CEA govern the domestic offer and sale of futures and options contracts traded on foreign boards of trade. These rules require, among other things, that the domestic offer and sale of foreign futures be effected through CFTC registrants or through entities subject to a foreign regulatory framework comparable to that governing domestic futures trading. *See* 17 CFR 30.3, 30.4, and 30.5 (1991). In enacting the Futures Trading Act of 1982, Congress expressed its understanding that neither the SEC nor the Commodity Futures Trading Commission ("CFTC") had intended to bar the sale of futures contracts on debt obligations of the United Kingdom of Great Britain and Northern Ireland to United States persons, and its expectation that administrative action would be taken to allow the sale of such futures contracts in the United States. *See* Proposing Release, *supra* note 11, 48 FR at 24725 (citing 128 Cong. Rec. H7492 (daily ed. September 23, 1982) (statements of Representatives Daschle and Wirth)).

[13] As originally adopted, the Rule required that the board of trade be located in the country that issued the underlying securities. This requirement was eliminated in 1987 *See* Securities Exchange Act Release No. 24209 (March 12, 1987), 52 FR 8875 (March 20, 1987).

[14] *See* Proposing Release, *supra* note 11, 48 FR at 24726–27

[15] As noted above, the rule as originally adopted applied only to debt obligations of Canada and of the United Kingdom of Great Britain and Northern Ireland. *See* Adopting Release, *supra* note 11 In 1986, the rule was amended to include debt obligations of Japan. *See* Securities Exchange Act Release No. 23423 (July 11, 1986), 51 FR 29596 (July 18, 1986). In 1987, the rule was amended to include debt obligations of Australia, France, and New Zealand. *See* Securities Exchange Act Release No. 25072 (October 29, 1987), 52 FR 42277 (November 4, 1987). In 1988, the rule was again amended to include debt obligations of Austria, Denmark, Finland, the Netherlands, Switzerland, and West Germany. *See* Securities Exchange Act Release No. 26217 (October 26, 1988), 53 FR 43860 (October 31, 1988).

[16] Reuters, Money Report (April 28, 1989).

[17] Reuters, Money Report (June 11, 1991).

[18] The CBOT ECU bonds futures contract also would include debt obligations of certain supranational organizations in the basket of securities underlying the proposed futures contract. The Commission has under consideration a petition by the CBOT requesting that these securities be deemed exempted securities under section 3(a)(12) of the Exchange Act for the purpose of trading futures contracts on these securities. *See* letter from Thomas R. Donovan, President and Chief Executive Officer CBOT, to Howard Kramer, Assistant Director, Division of Market Regulation, SEC, dated May 29, 1991 ("CBOT ECU Bond Letter").

[19] *See, e.g.*, letter from Raymond Guan, Vice President, The First Boston Corporation, to Jonathan G. Katz, Secretary, SEC, and Richard G. Ketchum, Director, Division of Market Regulation, SEC, dated June 29, 1989, and CBOT ECU Bond Letter, *supra* note 18.

that the contracts be traded on a board of trade) would continue to apply. This should ensure that a domestic market in the unregistered foreign sovereign debt of the Republics of Ireland or Italy does not develop. Therefore, the amendment should pose no risk for investors in the U.S. securities market.

The Commission also amends rule 3a12–8 to replace the reference to "West Germany" in the rule with a reference to the "Federal Republic of Germany," and to replace all references to the informal names of the countries listed in the rule with references to their official names. Both of these amendments clarify the terms of the rule, but do not result in a substantive change in the operation of the rule.

III. Discussion

In the Proposal Release, the Commission solicited comments on whether there are any legal or policy reasons for determining that debt obligations issued by Ireland or Italy should not be accorded the same treatment under the rule for the purpose of trading futures contracts on these securities in the U.S. or to U.S. persons as debt obligations issued by the twelve designated countries.[20] The Commission received no comment in response to its request for comment.

For the reasons discussed below, the Commission has determined that rule 3a12–8 should be amended to include the debt obligations of Ireland and Italy. The Commission also has decided to replace the reference to "West Germany" in the rule with a reference to the "Federal Republic of Germany," and to replace all references to the informal names of the countries listed in the Rule with references to their official names.

First, the Commission believes that the debt obligations of the two newly-designated countries should be subject to the same regulatory treatment under the rule as the debt obligations of the twelve designated countries for purposes of trading futures contracts on such debt obligations by United States persons. Like the debt obligations of the twelve designated countries,[21] the long-term debt obligations of each of the two newly-designated countries are rated in one of the two highest rating categories by at least two nationally recognized statistical rating organizations.[22] For purposes of the Rule, the Commission is aware of no material differences between the debt obligations of the two newly-designated countries and the debt obligations of the twelve designated countries.

Additionally, the Commission believes that there are no valid legal or policy reasons for denying U.S. investors the ability to trade futures on debt obligations of the two newly-designated sovereign issuers. Moreover, the availability to United States investors of these hedging vehicles will allow such investors to take advantage of the growing globalization of the securities markets.

Second, the Commission believes that amending the rule to replace the reference to "West Germany" in the rule with a reference to the "Federal Republic of Germany," and to replace all references to the informal names of the countries listed in the Rule with references to their official names is appropriate to clarify the terms of the rule. The first amendment reflects the fact that West Germany no longer exists as a separate country as a result of the re-unification of East Germany and West Germany, and codifies the Commission's Division of Market Regulation's interpretation that the reference to "West Germany" in the rule should be understood to mean the "Federal Republic of Germany."

In the same manner, the second amendment further clarifies the provisions of the rule by replacing all references to the informal names of the countries listed in the rule with references to their official names. Both of these amendments clarify the terms of the rule, but do not result in a substantive change in the operation of the rule.

IV. Regulatory Flexibility Act Consideration

The Chairman of the Commission certified in connection with the Release proposing the amendments to the rule [23] that these amendments, if adopted, would not have a significant economic impact on a substantial number of small entities. The Commission received no comments on this certification.

V. Effects on Competition and Other Findings

Section 23(a)(2) of the Act [24] requires the Commission, in adopting rules under the Act, to consider the competitive effects of such rules, if any, and to balance any impact against the regulatory benefits gained in terms of furthering the purposes of the Act. The Commission has considered the amendments to the rule in light of the standards cited in section 23(a)(2) and believes that adoption of the amendments will not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As stated above, the amendment is designed to assure the lawful availability in this country of Irish and Italian government bond futures that otherwise would not be permitted to be marketed under the terms of the CEA. The amendment thus serves to expand the range of financial products available in the United States and enhances competition in financial markets. Insofar as the rule contains limitations, they are designed to promote the purposes of the Act by ensuring that futures trading on Irish and Italian government securities is

[20] In addition, the Commission solicited comments on whether the information available in English regarding the newly-eligible futures contracts and the underlying sovereign debt obligations would be adequate to permit U.S. investors to make informed investment decisions. In adopting rule 3a12–8, the Commission decided not to require, as a condition to the exemption, that such information be available. *See* Adopting Release, *supra* note 11, 49 FR at 8597–98. At the time rule 3a12–8 was adopted, both the United Kingdom and Canada had government debt issues registered in the United States. As a result, although those particular issues were not the subject of futures trading, U.S. investors had relevant disclosure material concerning the issuers, *i.e.*, the governments of Canada and the United Kingdom. In addition, Australia, New Zealand, Austria, and Denmark had government debt tissues registered in the United States when they were added to the rule. Japan, France, Finland, the Netherlands, Switzerland, and West Germany did not have government debt issues registered in the United States when they were added to the rule. Thus, to a large measure the availability of information in English has not been a determinative factor when expanding the list of countries designated in rule 3a12–8. Currently, Ireland has government debt issues registered in the United States. (These issues are not the subject of futures trading on the IFOX.) Italy does not have government debt issues registered in the United States.

[21] In amending the Rule to exempt the debt securities of Austria, Denmark, Finland, the Netherlands, Switzerland, and West Germany, the Commission noted that the long-term sovereign debt of those countries was rated in one of the two highest rating categories by at least two nationally recognized statistical rating organizations. *See* Securities Exchange Act Release No. 26217 (October 26, 1988), 53 FR 43860 (October 31, 1988).

[22] Ireland's long-term sovereign debt is rated Aa3 by Moody's Investors Service ("Moody's") and AA- by Standard and Poor's ("S&P"). Italy's long-term sovereign debt is rated Aaa by Moody's and AA+ by S&P. Under Moody's rating criteria, debt which is rated Aaa is judged to be of the highest quality and debt which is rated Aa is judged to be of high quality by all standards. Aa-rated debt is judged to be of lower quality than Aaa-rated debt because: (1) The margins of protection for debt rated Aa may not be as large as in the highest rated debt (Aaa); (2) the fluctuation of protective elements may be of greater amplitude for Aa-rated instruments; or (3) other elements may be present which make the long-term risk appear somewhat larger than the Aaa securities. Under S&P's criteria, an issuer of debt which is rated AAA has an extremely strong capacity to pay interest and repay principal and an issuer of debt which is rated AA has a very strong capacity to pay interest and repay principal. A debt issue that is rated AA differs from the highest rated issues (AAA) only to a small degree.

[23] *See* Proposal Release *supra* note 4.

[24] 15 U.S.C. 78w(a)(2) (1988).

consistent with the goals and purposes of the federal securities laws by minimizing the impact of the rule on securities trading and distribution in the United States.

The Commission finds, in accordance with the Administrative Procedure Act,[25] that the amendments to the rule are exemptive in nature. Accordingly, the commission has determined to make the foregoing action effective immediately upon publication in the Federal Register.

VI. Statutory Basis

The amendments to rule 3a12–8 are being adopted pursuant to 15 U.S.C. 78a *et seq.*, particularly sections 3(a)(12) and 23(a), 15 U.S.C. 78c(a)(12) and 78w(a).

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

VII. Text of the Adopted Amendments

For the reasons set forth above, the Commission is amending part 240 of chapter II, title 17 of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c 77d, 77s, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 79q, 79t, 80a–29, 80a–37, unless otherwise noted.

2. § 240.3a12–8 is amended by revising paragraphs (a)(1)(iv) through (a)(1)(xii), and by adding paragraphs (a)(1)(xiii) through (xiv) as follows:

§ 240.3a12–8 Exemption for designated foreign government securities for purposes of futures trading.

(a) * * *

(1) * * *

(iv) the Commonwealth of Australia;

(v) the Republic of France;

(vi) New Zealand;

(vii) the Republic of Austria;

(viii) the Kingdom of Denmark;

(ix) the Republic of Finland;

(x) the Kingdom of the Netherlands;

(xi) Switzerland;

(xii) the Federal Republic of Germany;

(xiii) the Republic of Ireland; or

(xiv) the Republic of Italy.

* * * * *

By the Commission.

[25] 15 U.S.C. 553(d) (1988).

Dated: January 8, 1992.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–848 Filed 1–13–92; 8:45 am]

BILLING CODE 8010–01–M

RAILROAD RETIREMENT BOARD

20 CFR Part 340

RIN 3220–AA77

Recovery of Benefits

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby amends its regulations by adding three instances in which recoveries of overpayments of benefits under the Railroad Unemployment Insurance Act will not be subject to waiver, and to clarify certain procedures relating to the recovery of overpayments under that statute.

EFFECTIVE DATE: January 14, 1992.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Assistant General Counsel, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4513 (FTS 386–4513), TDD (312) 751–4701, TDD (FTS 386–4701).

SUPPLEMENTARY INFORMATION: Section 2(d) of the Railroad Unemployment Insurance Act (RUIA) (45 U.S.C. 352(d)) provides that the Board may waive recovery of an overpayment of benefits under that Act if the overpaid individual was not at fault in causing the overpayment and if recovery of the overpayment would be contrary to the purpose of the RUIA (financial hardship test) or would be against equity or good conscience.

On January 28, 1988, the Board published regulations explaining how an overpaid individual may request waiver and how the Board applies waiver under the RUIA (20 CFR parts 320 and 340, appearing at 53 FR 2485). Section 340.10(e) provided that an overpayment will not be waived when the recovery of the overpayment is sought from an individual other than the overpaid employee. The Board now amends § 340.10(e) by adding three situations in which waiver also will not be available. Section 340.10(e)(1) merely restates the previous rule as subsection (1). Section 340.10(e)(2) provides that where the overpayment is equal to or less than 10 times the current maximum daily benefit rate under the RUIA (presently $31) such an overpayment will not be waived. In such cases it is the judgment of the Board that recovery of this large overpayment would not be contrary to the purpose of the RUIA nor would recovery be against equity or good conscience. The Board notes that the individual will have had the use of the overpayment, interest free, for a period of time and that he or she will be able to ease financial difficulty by repaying in installments. The rule thus provides that where the overpayment is equal to or less than 10 times the daily benefit rate that there be a conclusive presumption that it is not contrary to the purpose of the RUIA or against equity or good conscience to recover such payments. Consequently, in such an instance there will be no right to request waiver of the overpayment.

Section 340.10(e)(3) provides that there shall be no waiver where the overpayment of RUIA benefits may be recovered from an accrual of a retroactive award of annuities under the Railroad Retirement Act (RRA). A sick or disabled railroad employee who is receiving benefits under the RUIA may eventually become entitled to a disability annuity under the RRA for the same period that he or she received the RUIA benefits. In such an instance an overpayment of benefits under the RUIA is created since section 4(a–1)(ii) of the RUIA (45 U.S.C. 354(a–1)(ii)) prohibits the payment of benefits under that statute for any period in which the employee is also receiving benefits under the RRA. In such an instance the Board usually recovers the overpaid benefits under the RUIA from the accrual of benefits under the RRA. The rule provides that where the overpayment of benefits under the RUIA may be recovered in such a manner there shall be no right to waiver by the overpaid employee. In such a case the employee cannot show that recovery of the overpayment will cause financial hardship since no future benefits are being taken away nor is he or she being asked to pay anything out-of-pocket. His or her accrual of benefits under the RRA is simply being reduced to recover the overpayment.

Section 340.10(e)(4) provides that waiver will not be granted to the extent that the overpaid individual is due a retroactive accrual payment from any Federal government agency. The Board considers recovery in such cases to be neither contrary to the purpose of the RUIA nor against equity and good conscience. Accordingly, waiver of recovery would not be appropriate. Of course, in instances in which the overpayment exceeds the accrual, the employee would be able to request waiver of the remaining overpayment

subject to the provisions of § 320.11 of title 20. In addition, any accrual of benefits payable by the United States is considered in determining whether the employee is financially able to repay the overpayment (see § 340.10(c)(3)).

In addition, the Board amends § 340.7 to make it clear that all overpayments, even those waived under this part, are still deducted from any residual lump sum death payment under the Railroad Retirement Act. Section 340.8 is amended to clarify when recovery by actuarial adjustment is effective to recover an overpayment. Finally, § 340.10(d) is amended by changing the word "and" in the phrase "equity and good conscience" to "or" to conform to the language in the RUIA.

This rule was published in proposed form on June 20, 1989 (54 FR 25877), and again as a proposed rule on July 17, 1991 (56 FR 32523). In neither case were any comments received within the respective comment periods.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. In addition, no requirements for the collection of information within the meaning of the Paperwork Reduction Act of 1980 are imposed.

List of Subjects in 20 CFR Part 340

Railroad employees, Railroad unemployment insurance.

For the reasons set out in the preamble, title 20, chapter II of the Code of Federal Regulations is amended as follows:

PART 340—RECOVERY OF BENEFITS.

1. The authority for part 340 continues to read as follows:

Authority: 45 U.S.C. 362(1).

2. Section 340.7 is revised to read as follows:

§ 340.7 Deduction in computation of death benefit.

In computing the residual lump sum provided for in part 234, subpart D, of this chapter, the Board shall include in the benefits to be deducted from the gross residual all amounts recoverable under this part, but not recovered, including amounts where recovery was waived, that were paid to the individual or paid to others as benefits accrued to the individual but not paid at death.

3. Section 340.8 is revised to read as follows:

§ 340.8 Recovery by adjustment in connection with subsequent payments under the Railroad Retirement Act.

Recovery under this part may be made by permanently reducing the amount of any annuity payable to the overpaid individual (or an individual receiving an annuity based upon the same compensation record as that of the overpaid individual) under the Railroad Retirement Act. This method of recovery is called an actuarial adjustment of the annuity. The Board cannot require any individual to take an actuarial adjustment in order to recover an overpayment nor is an actuarial adjustment available as a matter of right. An actuarial adjustment does not become effective until the overpaid individual negotiates the first annuity check which reflects the annuity rate after actuarial adjustment.

Example. An individual agrees to recovery of a $5,000 overpayment made to him by actuarial adjustment to an annuity awarded him under the Railroad Retirement Act. However, he dies before negotiating the first annuity check reflecting his actuarially reduced rate. The $5,000 is not considered recovered.

4. Section 340.10 is amended by revising paragraphs (c)(3), (d), and (e), to read as follows:

§ 340.10 Waiver of recovery of erroneous payments.

* * * * *

(c) * * *

(3) For purposes of this section, resources include, but are not limited to, liquid assets such as cash on hand, the value of stocks, bonds, savings accounts, mutual funds, any accrual benefit payable by the United States of America or any other source.

* * * * *

(d) *When recovery is against equity or good conscience.* Recovery is considered to be against equity or good conscience when a person, in reliance on such payments or on notice that such payment would be made, relinquished a valuable right or changed his or her position for the worse.

(e) *Recoveries not subject to waiver.* (1) Where an amount is recoverable pursuant to section 2(f) of the Act from remuneration payable to an employee by a person or company, or where a lien for reimbursement of sickness benefits has arisen pursuant to section 12(o) of the Act, and in either case recovery is sought from a person other than the employee, no right to waiver of recovery exists.

(2) Where the amount recoverable is equal to or less than 10 times the current maximum daily benefit rate under the Railroad Unemployment Insurance Act it shall not be considered contrary to the purpose of the Act or against equity or good conscience to recover such payment. Consequently, the amount recoverable is not subject to waiver under this part.

(3) Where the amount recoverable is the result of an overpayment of benefits payable under the Railroad Unemployment Insurance Act due to entitlement to annuities under the Railroad Retirement Act for the same days for which benefits were payable, and recovery of such overpayment may be made by offset against an accrual of the annuities, it shall not be considered contrary to the purpose of the Act or against equity or good conscience to recover the erroneous payment by offset against such accrual. Consequently, the amount recoverable is not subject to waiver under this part.

(4) Where there exists accumulated Federal benefits payable by any executive agency of the United States, any amount recoverable which is equal to or less than the accumulated Federal benefits is not subject to waiver. Any amount recoverable which is greater than the identified accumulated Federal benefits may be considered for waiver in accordance with the provisions of this part and part 320 of this chapter.

Dated: January 6, 1992.

By authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 92–612 Filed 1–13–92; 8:45 am]

BILLING CODE 7905–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

RIN 0960–AD04

Federal Old-Age, Survivors, and Disability Insurance Benefits; Inclusion of Certain Deferred Compensation in Determination of Wage-Based Adjustments

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: These final regulations reflect changes made as a result of section 10208 of Public Law (Pub. L.) 101–239, the Omnibus Budget Reconciliation Act of 1989. That statute provides for inclusion of contributions to certain deferred compensation plans in the determination of the national average wage indexing series, beginning with average wages for 1991.

The legislative change to the calculation of the average wage index

(AWI), reflects increases in deferred compensation contributed after 1989. The revised AWI, through indexation of earnings, may increase benefits to individuals who become eligible for benefits in 1993 and later. The change in the indexing series for 1991 and later may also affect wage-indexed program amounts for 1993 and later.

EFFECTIVE DATE: These rules are effective on January 14, 1992.

FOR FURTHER INFORMATION CONTACT: Phyllis E. Green, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, 301–966–9822.

SUPPLEMENTARY INFORMATION:

Background

Public Law 101–239, the "Omnibus Budget Reconciliation Act of 1989" was enacted December 19, 1989. Under section 10208 of this statute ("Inclusion of Certain Deferred Compensation in Determination of Wage-Based Adjustments"), contributions to certain deferred compensation plans will be included in the computation of the AWI, beginning with 1991. The term "deferred compensation contribution amount" means:

a. An amount excluded from gross income under chapter 1 of the Internal Revenue Code of 1986 (IRC), by reason of sections 402(a)(8) (Cash or Deferred Arrangements), 402(h)(1)(B) (Special Rules For Simplified Employee Pensions), or 457(a) (Year of Inclusion in Gross Income) of such Code or by reason of a salary reduction agreement under section 403(b) (Taxability of Beneficiary under Annuity Purchased by section 501(c)(3) Organization or Public School) of such Code;

b. any amount with respect to which a deduction is allowable under chapter 1 of such Code by reason of a contribution to a plan described in section 501(c)(18) (a trust or trusts created before June 25, 1959, forming part of a plan providing for the payment of benefits under a pension plan meeting certain criteria and funded only by contributions of employees) of such Code; and,

c. to the extent provided in regulations of the Secretary of Health and Human Services, deferred compensation provided under any arrangement, agreement, or plan referred to in subsection (i) or (j) of section 209 of the Social Security Act (the Act), as amended by sections 10208(d)(1) (S) and (T) of Public Law 101–239.

The current regulations (§ 404.211(c)) defining the term "average of the total wages" for years after 1977 include only wages reported on Internal Revenue Service Form W–2 for Federal income tax purposes. In these final regulations, the definition is broadened for wages earned after 1990 to also include contributions to certain deferred compensation plans (described above), as required by section 209(k) of the Act, added by section 10208 of Public Law 101–239.

The contributions to deferred compensation plans, as described above, are excluded from gross income for income tax purposes in the year that they are earned and are reported separately from other earned income on Form W–2. Distributions from most such plans are reported for income tax purposes on forms other than Form W–2. However, distributions from plans covered by section 457(a) of the IRC are reported on Form W–2. The regulations will include in the calculation of the average of the total wages only those deferred compensation amounts identified on the Forms W–2 as contributed to the plans during a particular year. In order to avoid counting deferred compensation amounts relating to section 457(a) plans twice (once when contributed to the plans and again when distributed to individuals from the plans), we will exclude from the calculation of the average of the total wages any deferred compensation amounts identified on Forms W–2 as distributed to individuals during that particular year.

The revised AWI may increase benefits to individuals who become eligible for benefits in 1993 and later. The change in the indexing series for 1991 and later may also affect, subject to rounding, wage-indexed program amounts for 1993 and later. These wage-indexed program amounts are (1) the contributions and benefit base, (2) the Hospital Insurance contribution base, (3) the "old-law" contribution and benefit base (as determined under section 230 of the Act as in effect before the 1977 amendments), (4) the retirement test exempt amounts, (5) the amount of earnings required for a worker to be credited with a quarter of coverage, and (6) the formulas for calculating an individual's primary insurance amount and the family maximum benefit amount.

The statute provides a transitional rule for computing the average of the total wages used in the formula for determining the contribution and benefit base and the "old-law" contribution and benefit base for 1990–1992. Under the transitional rule, determination of these bases for 1990–1992 is based on special "deemed" average wages for 1988–1990. (Similarly, the Hospital Insurance contribution base for 1992 is based on deemed average wages for 1989 and 1990.) The deemed average wage is a temporary deviation from the regular AWI, and is used soley for the purpose of determining the contribution and benefit base, the "old-law" contribution and benefit base for 1990–1992 and the Hospital Insurance contribution base for 1992.

Computation of 1990–1992 Bases (Transitional Rule)

Computations of the contribution and benefit base and the "old-law" contribution and benefit base amounts for 1990 and 1991 were published as notices in the **Federal Register** on December 29, 1989, (54 FR 53751) and on October 31, 1990, (55 FR 45856) respectively, together with the deemed average wages for 1988 and 1989 on which such computations were based. For the years 1988 and 1989, the deemed average wage under the transitional rule is the AWI for a year plus 2 percent of the prior year's AWI.

The deemed average wage for 1990 reflects the actual data on deferred compensation contributions. The 1990 deemed average wage is defined as:

$$(\text{1989 AWI}) \times \frac{\text{1990 average wages including deferred compensation}}{\text{1989 average wages excluding deferred compensation}}$$

The average wages used in the above ratio are those calculated directly from Form W–2. The 1992 base is equal to the 1991 base multiplied by the ratio of the 1990 deemed average wage to the 1989 deemed average wage.

Two percent of a prior year's AWI, as used to determine a deemed average wage for 1988 or 1989, is an estimate of the deferred compensation contributions that have been paid to date, relative to regular wages. Thus, the transitional rule raises the contribution and benefit base for 1990 and 1991 to about the same level it would have been if deferred compensation had always been included in the average wage indexing series. Further, the rule adjusts that level for actual deferred compensation data for 1990 (the first year for which such data will be available to the Social Security Administration (SSA) from Form W–2 reports filed by employers). The change in the average wage indexing series, beginning with 1991, then maintains the base at levels which reflect the increase in wages, including deferred compensation, for 1993 and later.

Computation of Wage-Indexed Program Amounts for 1993 and Later

The AWI for years before 1991 is the same as under prior law. For 1991, the AWI is defined as:

$$(1990\ \text{AWI}) \times \frac{\text{1991 average wages including deferred compensation}}{\text{1990 average wages including deferred compensation}}$$

The average wages used in the above ratio are those calculated directly from SSA's annual wage data. AWI's for years after 1991 are similarly defined.

For years 1993 and later, all wage-indexed program amounts, previously mentioned, are potentially affected by the new definition of AWI. The amounts which are rounded to the nearest multiple of $10 (e.g., the monthly retirement test exempt amounts) are less likely to be affected in the near term than amounts which are rounded to the nearest dollar (the wage-indexed amounts in the formulas for computing an individual's primary insurance amount and the family maximum benefit). The methods used to compute the wage-indexed amounts are not changed by the new statute.

Regulations

Existing regulations do not provide for the inclusion of contributions to certain deferred compensation plans in the determination of the average of the total wages. These final regulations expand § 404.211, which sets out the method used in indexing and averaging earnings, to include deferred compensation amounts provided by the statute.

In addition, we are updating § 404.1048 to reflect the rules for determining the contribution and benefit based for years after 1992.

Regulatory Procedures

Even when not required by statute, as a matter of policy, the Department of Health and Human Services generally follows the notice of proposed rulemaking and public comment procedures specified in the Administrative Procedure Act (APA), 5 U.S.C. 553, in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for waiver of notice of proposed rulemaking and public comment procedures in these regulations because we are only reflecting statutory changes which are not discretionary and do not involve the setting of policy. Therefore, opportunity for prior public comment is unnecessary and these amendments are being issued as final rules.

Executive Order No. 12291

The Secretary has determined that this is not a major rule under the terms of Executive Order 12291 because no additional program or administrative costs are contemplated and the threshold criteria for a major rule are not otherwise met. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These proposed regulations do not impose reporting and recordkeeping requirements necessitating clearance by the Office of Management and Budget.

Regulatory Flexibility Act

We certify that these final regulations will not have a significant economic impact on a substantial number of small entities. Any significant economic impact which would result from the inclusion of deferred compensation in the calculation of the amount of wages on which small entities will be required to pay taxes under the Federal Insurance Contribution Act would be caused by the statutory amendment imposed by section 10208 of Public Law 101–239. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802, Social Security—Disability Insurance; 93.803, Social Security—Retirement Insurance; 93.805, Social Security—Survivor's Insurance.)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure; Death benefits; Disability benefits; Old-Age, Survivors, and Disability Insurance.

Dated: October 7, 1991.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: November 5, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set out in the preamble, title 20, chapter III, part 404 of the Code of Federal Regulations is amended as follows:

PART 404—[AMENDED]

1. The authority citation for subpart C of part 404 continues to read as follows:

Authority: Secs. 202(a), 205(a), 215, and 1102 of the Social Security Act; 42 U.S.C. 402(a), 405(a), 415, and 1302.

2. Section 404.211 is amended by revising paragraph (c) to read as follows:

§ 404.211 Computing your average indexed monthly earnings.

* * * * *

(c) *Average of the total wages.* Before we compute your average indexed monthly earnings, we must first know the "average of the total wages" of all workers for each year from 1951 until the second year before you become eligible. The average of the total wages for years after 1950 are shown in appendix I. Corresponding figures for more recent years which have not yet been incorporated into this appendix are published in the **Federal Register** on or before November 1 of the succeeding year. "Average of the total wages" (or "average wage") means:

(1) For the years 1951 through 1977, four times the amount of average taxable wages that were reported to the Social Security Administration for the first calendar quarter of each year for social security tax purposes. For years prior to 1973, these average wages were determined from a sampling of these reports.

(2) For the years 1978 through 1990, all remuneration reported as wages on Form W–2 to the Internal Revenue Service for all employees for income tax purposes, divided by the number of wage earners. We adjusted those averages to make them comparable to the averages for 1951–1977. For years after 1977, the term includes remuneration for services not covered by social security and remuneration for covered employment in excess of that which is subject to FICA contributions.

(3) For years after 1990, all remuneration reported as wages on Form W–2 to the Internal Revenue Service for all employees for income tax purposes, including remuneration described in paragraph (c)(2) of this section, plus contributions to certain deferred compensation plans described in section 209(k) of the Social Security Act (also reported on Form W–2), divided by the number of wage earners. If both distributions from and

contributions to any such deferred compensation plan are reported on Form W–2, we will include only the contributions in the calculation of the average of the total wages. We will adjust those averages to make them comparable to the averages for 1951–1990.

* * * * *

3. The authority citation for subpart K of part 404 continues to read as follows:

Authority: Secs. 205(a), 209, 210, 211, 229(a), 230, 231, and 1102 of the Social Security Act; 42 U.S.C. 405(a), 409, 410, 411, 429(a), 430, 431, and 1302.

4. Section 404.1048 is amended by revising the title and paragraphs (a) and (c) to read as follows:

§ 404.1048 Contribution and benefit base after 1992.

(a) General. The contribution and benefit base after 1992 is figured under the formula described in paragraph (b) of this section in any calendar year in which there is an automatic cost-of-living increase in old-age, survivors, and disability insurance benefits. For purposes of this section, the calendar year in which the contribution and benefit base is figured is called the determination year. The base figured in the determination year applies to wages paid after (and taxable years beginning after) the determination year.

* * * * *

(c) *Average of the total wages.* The average of the total wages means the amount equal to all remuneration reported as wages on Form W–2 to the Internal Revenue Service for all employees for income tax purposes plus contributions to certain deferred compensation plans described in section 209(k) of the Social Security Act (also reported on Form W–2), divided by the number of wage earners. If both distributions from and contributions to any such deferred compensation plan are reported on Form W–2, we will include only the contributions in the calculation of the average of the total wages. The reported remuneration and deferred compensation contributions include earnings from work not covered under social security and earnings from work covered under social security that are more than the annual wage limitation described in § 404.1047.

[FR Doc. 92–937 Filed 1–13–92; 8:45 am]

BILLING CODE 4190–29–M

20 CFR Part 404

[Regulation No. 4]

RIN 0960–AD19

Federal Old-Age, Survivors, and Disability Insurance Benefits; Continued Payment of Benefits During Appeal

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: These final regulations reflect section 5102 of Public Law (Pub. L.) 101–508, the Omnibus Budget Reconciliation Act of 1990. Section 5102 amended section 223(g) of the Social Security Act (the Act) and made permanent statutory provisions which previously were applicable on a temporary basis. Under these statutory provisions, a disabled beneficiary may elect to have his or her disability insurance benefits under title II of the Act, and/or Medicare benefits under title XVIII of the Act, continued pending a reconsideration determination or an administrative law judge hearing decision issued after we have made an initial determination that the individual's impairments have ceased, did not exist, or are no longer disabling. Such an individual may also elect to have benefits continued for his or her spouse and children who are receiving benefits on his or her earnings record, if they also elect to have their benefits continued. The statutory provision allowing for the continuation of benefits pending appeal also applies to persons receiving child's insurance benefits based on disability; persons receiving widow's or widower's benefits based on disability; and persons receiving mother's or father's benefits on the basis of having in their care a person receiving child's insurance benefits based on disability.

EFFECTIVE DATE: January 14, 1992.

FOR FURTHER INFORMATION CONTACT: Lawrence V. Dudar, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965–1795.

SUPPLEMENTARY INFORMATION: These final regulations reflect section 5102 of Public Law 101–508. Prior to this statutory amendment, the statutory provisions concerning the continuation of benefits pending appeal were available if, prior to January 1, 1991, we made an initial determination that an individual's impairments, on which we had based our disability determination or decision, had ceased, did not exist, or were no longer disabling. Also under the prior law, continued benefit payments could not be paid for months after June 1991. Section 5102 of Public Law 101–508 removed these time limitations and made permanent the continuation of benefit provisions. We are amending § 404.1597a of our regulations to reflect these two statutory changes.

Regulatory Procedures

The Department generally follows the notice of proposed rulemaking and public comment procedures specified in the Administrative Procedure Act (APA), 5 U.S.C. 553(b), in the development of its regulations. The APA provides exceptions to its notice and public comment procedures when an agency finds that there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for waiver of notice of proposed rulemaking and public comment procedures in these regulations because we are only reflecting statutory changes which are not discretionary and do not involve the setting of any policy. Therefore, we have determined that opportunity for prior public comment is unnecessary. Consequently, these amendments are being issued as a final rule.

Executive Order 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because these regulations will not result in any significant costs or otherwise meet the criteria for a major rule. We estimate the program costs for implementing the legislation on which these rules are based to be $10 million for fiscal year (FY) 1991, $35 million for FY 1992, $50 million for FY 1993, $65 million for FY 1994, $85 million for FY 1995, and $95 million for FY 1996 with estimated administrative costs of $2 million for FY 1991, and $3 million each for FY 1992, FY 1993, FY 1994, FY 1995, and FY 1996. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These final regulations impose no recordkeeping or reporting requirements requiring the Office of Management and Budget clearance.

Regulatory Flexibility Act

The Secretary certifies that these final regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as

provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Programs: No. 93.802 Social Security Disability Insurance; No. 93.803 Social Security Retirement Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure; Death benefits; Disability benefits; Old-Age, Survivors and Disability Insurance.

Dated: October 10, 1991.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: November 18, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services

Subpart P of part 404 of chapter III of title 20 of the Code of Federal Regulations is amended to read as follows:

PART 404—[AMENDED]

1. The authority citation for subpart P is revised to read as follows:

Authority: Secs. 202, 205(a), (b), and (d) through (h), 216(i), 221(a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 402, 405(a), (b), and (d) through (h), 416(i), 421(a) and (i), 422(c), 423, 425, and 1302.

2. Section 404.1597a is amended by removing paragraphs (b)(3)(iii) and (h)(2)(iii) and by revising paragraphs (b)(1), (b)(3)(ii) and (h)(2)(ii) to read as follows:

§ 404.1597a Continued benefits pending appeal of a medical cessation determination.

* * * * *

(b) *When the provisions of this section are available.* (1) Benefits may be continued under this section only if the determination that your physical or mental impairment(s) has ceased, has never existed, or is no longer disabling is made on or after January 12, 1983 (or before January 12, 1983, and a timely request for reconsideration or a hearing before an administrative law judge is pending on that date).

* * * * *

(3) * * *

(ii) The month before the month no timely request for a reconsideration or a hearing before an administrative law judge is pending. These continued benefits may be stopped or adjusted because of certain events (such as work and earnings or receipt of worker's compensation) which occur while you are receiving these continued benefits and affect your right to receive continued benefits.

* * * * *

(h) * * *

(2) * * *

(ii) The month before the month no timely request for a reconsideration or a hearing before an administrative law judge is pending. These continued benefits may be stopped or adjusted because of certain events (such as work and earnings or payment of worker's compensation) which occur while an eligible individual is receiving continued benefits and affect his or her right to receive continued benefits.

* * * * *

[FR Doc. 92–939 Filed 1–13–92; 8:45 am]

BILLING CODE 4150–29–M

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20 CFR Part 416

RIN 0960–AC99

Supplemental Security Income for the Aged, Blind, and Disabled; Subpart K—Income and Subpart L—Resources and Exclusions; Exclusion of Interest on Burial Spaces

AGENCY: Social Security Administration, HHS.

ACTION: Final rules.

SUMMARY: These final regulations reflect amendments to the Social Security Act (the Act) made by section 8013 of Public Law (Pub. L.) 101–239 (the Omnibus Budget Reconciliation Act of 1989, enacted December 19, 1989). The Act, as amended by that section, provides, for supplemental security income (SSI) purposes, an exclusion from income of the interest accrued on, and left to accumulate as part of, the value of an excluded burial space purchase agreement entered into by an individual or the individual's spouse; and provides an exclusion from resources of the value of a burial space purchase agreement including any interest accrued thereon. These amendments were effective April 1, 1990. In addition, we are making several technical changes to § 416.1231 to clarify and improve the organization of the rules set forth in that section.

EFFECTIVE DATE: These rules are effective April 1, 1990.

FOR FURTHER INFORMATION CONTACT: Phyllis E. Green, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (301) 966–9822.

SUPPLEMENTARY INFORMATION:

Background

Public Law 101–239, the "Omnibus Budget Reconciliation Act of 1989" was enacted December 19, 1989. Section 8013 of this law amended sections 1612(b) and 1613(a)(2)(B) of the Act to provide an exclusion from income of the interest accrued and left to accumulate on the value of a burial space purchase agreement entered into by an individual or spouse (section 8013(a)); and to provide an exclusion from resources of the value of an agreement, including any interest accumulated thereon, representing the purchase of a burial space (section 8013(b)).

Prior to enactment of this law, there were no statutory provisions for the exclusion from income and resources of interest accrued on the value of an agreement representing the purchase of a burial space for an individual, the individual's spouse, or a member of the individual's immediate family. If the individual could access the interest and use it for his or her support and maintenance, the accrued interest was countable income upon receipt and, if retained into the following month, became a resource for SSI purposes.

Burial agreements often contain items that are excludable under the burial fund exclusion and other items excluded under the burial space exclusion, as set forth in § 416.1231. Prior to enactment of Public Law 101–239, interest earned on and left to accumulate as part of excluded burial funds, could be excluded from income and resources under section 1613(d)(4) of the Act. No statutory authority specifically provided for the exclusion from income and resources of interest earned on excluded burial spaces.

Proposed Changes

We are amending the regulations to reflect sections 1612(b) and 1613(a)(2)(B) as amended, as follows.

Section 416.1124 is amended to provide that effective April 1, 1990, interest accrued on and left to accumulate as part of the value of an excluded burial space purchase agreement entered into by an individual or his or her spouse will be excluded from income.

Section 416.1231 is amended to provide that effective April 1, 1990, the value of a burial space purchase agreement, including any interest accumulated thereon, will be excluded from resources

Technical Changes

On July 11, 1990 (55 FR 28373), we published regulations amending § 416.1231(a)(2). In these final rules, we are also making technical changes to § 416.1231(a)(2) to clarify and improve the organization of the rules set forth in

that section. We are making changes as follows:

• Deleting the third sentence of paragraph (a)(2) because it is redundant.

• Moving the fourth and fifth sentences of paragraph (a)(2) to new paragraph (a)(3) so that these sentences will be combined with other text in the new paragraph on agreements representing the purchase of a burial space.

• Deleting the word "contract" from these two sentences and substituting the word "agreement" so that the regulations use wording that is consistent with the statute.

Regulatory Procedures

Justification for Final Rules

The Department, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act (APA) notice of proposed rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its notice and comment procedures when an agency finds there is good cause for dispensing with such procedures. Section 553(b)(B) of the APA exempts application of notice and comment rulemaking procedures "when the agency for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." We are dispensing with notice and comment rulemaking in the case of these rules because such rulemaking is unnecessary. These rules merely reflect, without exercise of discretion, the provisions of sections 1612(b) and 1613(a)(2)(B) of the Act as amended by section 8013 of Public Law 101–239. Further, these statutory amendments were made effective by Congress as of April 1, 1990. In addition, notice and comment rulemaking is unnecessary for the technical changes to § 416.1231(a)(2). The technical changes do not affect the substance of that rule which was published pursuant to notice and comment rulemaking. The technical changes merely make clarifying and organizational changes made necessary by the rules to implement sections 1612(b) and 1613(a)(2)(B) as amended.

Executive Order No. 12291

The Secretary has determined that this is not a major rule under the terms of Executive Order 12291 because the program costs are estimated to be negligible, the administrative savings are estimated to be less than $1 million, and the threshold criteria for a major rule are not otherwise met. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act of 1980

These regulations do not impose reporting and recordkeeping requirements necessitating clearance by the Office of Management and Budget.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 93.807, Supplemental Security Income Program)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income.

Dated: September 23, 1991.

Gwendolyn S. King,

Commissioner of Social Security.

Approved: November 5, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set out in the preamble, title 20, chapter III, part 416 of the Code of Federal Regulations is amended as follows:

PART 416—[AMENDED]

1. The authority citation for subpart K of part 416 is revised to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; sec. 211 of Pub. L. 93–66, 87 Stat. 154.

2. Section 416.1124 is amended by adding a new paragraph (c)(15) to read as follows:

§ 416.1124 Unearned income we do not count.

* * * * *

(c) * * *

(15) Any interest accrued on and left to accumulate as part of the value of an excluded burial space purchase agreement. This exclusion from income applies to interest accrued on or after April 1, 1990.

3. The authority citation for subpart L of part 416 continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621 and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j and 1383; sec. 211 of Pub. L. 93–66, 87 Stat. 154.

4. Section 416.1231 is amended by revising paragraph (a)(2), redesignating existing paragraph (a)(3) as (a)(4) and adding a new paragraph (a)(3) to read as follows:

§ 416.1231 Burial spaces and certain funds set aside for burial expenses.

(a) * * *

(2) *Burial spaces defined.* For purposes of this section "burial spaces" include burial plots, gravesites, crypts, mausoleums, urns, niches and other customary and traditional repositories for the deceased's bodily remains provided such spaces are owned by the individual or are held for his or her use. Additionally, the term includes necessary and reasonable improvements or additions to or upon such burial spaces including, but not limited to, vaults, headstones, markers, plaques, or burial containers and arrangements for opening and closing the gravesite for burial of the deceased.

(3) *An agreement representing the purchase of a burial space.* The value of an agreement representing the purchase of a burial space, including any accumulated interest, will be excluded from resources. We do not consider a burial space "held for" an individual under an agreement unless the individual currently owns and is currently entitled to the use of the space under that agreement. For example, we will not consider a burial space "held for" an individual under an installment sales agreement or other similar device under which the individual does not currently own nor currently have the right to use the space, nor is the seller currently obligated to provide the space, until the purchase amount is paid in full.

* * * * *

[FR Doc. 92–938 Filed 1–13–92; 8:45 am]
BILLING CODE 4190–29–M

DEPARTMENT OF STATE

Bureau of Economic and Business Affairs

Foreign Prohibitions on Longshore Work by U.S. Nationals

[Public Notice 1550]

22 CFR Part 89

AGENCY: Department of State.

ACTION: Final rule; correction.

SUMMARY: This correction is being issued to include Japan in the list in the final rule published on December 27, 1991 (56 FR 66970) of longshore work by particular activity, of countries where performance of such a particular activity by crewmembers aboard United States

vessels is prohibited by law, regulation or in practice in the country concerned.

DATES: Effective date: January 14, 1992.

ADDRESSES: For mailing public comments: Office of Maritime and Land Transport (EB/TRA/MA), room 5828, Department of State, Washington DC 20520–5816.

FOR FURTHER INFORMATION CONTACT: Stephen Miller, Office of Maritime and Land Transport, Department of State, Washington DC 20520–5816. (202) 647–6961.

SUPPLEMENTARY INFORMATION: Section 258(d)(2) of the Immigration and Nationality Act of 1952, as amended, directs the Secretary of State to "compile and annually maintain a list, of longshore work by particular activity, of countries where performance of such work by crewmembers aboard United States vessels is prohibited by law, regulation or in practice in the country." On December 27, 1991, the Department issued a list in the form of a final rule (56 FR 66970). Due to clerical error, the listing for Japan was omitted from the list. (The explanation for Japan's inclusion is found at 56 FR 66973.) This notice places Japan in the list. The following correction is made in 22 CFR part 89, published in the **Federal Register** on December 27, 1991 (56 FR 66970): At the bottom of the third column on page 66974, insert after the entry for Jamaica the following entry:

"Japan
(a) All longshore activities."

Dated: December 3, 1991.

Eugene J. McAllister,

Assistant Secretary, Economic and Business Affairs, Department of State.

[FR Doc. 92–822 Filed 1–13–92; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 50

[Docket No. R–92–1586; FR–3214–I–01]

RIN 2501–AB36

Environmental Policy for the HOPE Grant Programs

AGENCY: Office of the Secretary, HUD.

ACTION: Interim rule and request for comments.

SUMMARY: This interim rule amends the Department's environmental regulations, part 50 of title 24 of the Code of Federal Regulations, in support of the new HOPE Grant Programs:

HOPE for Public and Indian Housing Homeownership (HOPE 1);

HOPE for Homeownership of Multifamily Units (HOPE 2); and

HOPE for Homeownership of Single Family Homes (HOPE 3).

Amended Notices of Program Guidelines and related Notices of Fund Availability for these programs are published elsewhere in today's edition of the **Federal Register.**

This interim rule amends part 50 to add a categorical exclusion and exemption for any approval by HUD of planning grants under all three HOPE Grant programs. The categorical exclusion applies to environmental assessment and compliance requirements of the National Environmental Policy Act (NEPA), while the exemption applies to the environmental review and compliance requirements of the other Federal environmental laws and authorities listed in 24 CFR 50.4. The rule also adds a categorical exclusion from the environmental assessment requirements of NEPA for any approval by HUD of implementation grants under the HOPE for Homeownership of Single Family Homes program (HOPE 3). However, compliance with applicable Federal environmental laws and authorities other than NEPA, listed in 24 CFR 50.4, is required for proposed acquisition and rehabilitation of existing single-family (1- to 4-unit) homes.

The changes that this rule makes to part 50 are referred to in the amended HOPE Notices of Program Guidelines.

DATES: Effective date: February 13, 1992. Comments must be received by April 15, 1992.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of the General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection between 7:30 a.m. and 5:30 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: Richard H. Broun, Director, Office of Environment and Energy, room 7240, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. For telephone communications, contact Walter Prybyla, Deputy Director for Policy, Environmental Review Division, at (202) 708–2810, TDD (202) 708–2565. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Amendments Made by Interim Rule

This interim rule amends HUD environmental regulations at 24 CFR part 50 (Protection and Enhancement of Environmental Quality) to add the following:

(1) A categorical exclusion and exemption for any approval by HUD of planning grants under all HOPE Grant Programs. The categorical exclusion applies to environmental review and compliance requirements of the National Environmental Policy Act of 1969 (NEPA). In addition, compliance with other Federal environmental laws and authorities listed in 24 CFR 50.4 is not required, and exemption from these laws and authorities has therefore also been added.

(2) A categorical exclusion from NEPA review for any approval by HUD of implementation grants under the HOPE 3 program (HOPE for Homeownership of Single Family Homes). A categorical exclusion applies only to the environmental assessment requirements of NEPA. Compliance with applicable Federal environmental laws and authorities listed in 24 CFR 50.4 is required for proposed acquisition and rehabilitation of existing single-family (1 to 4 unit) homes.

Planning Grants: HOPE 1, 2, and 3

Eligible planning grant activities funded under the three HOPE programs are explained in the three sets of amended HOPE Notices of Program Guidelines. The exemption is being added to part 50 as a new § 50.19, Exemptions from environmental laws and authorities other than NEPA. The categorical exclusion from NEPA is being added to part 50 as a new § 50.20(q)(1). The exclusion and exemption apply to all financial assistance for undertaking planning activities authorized by section 302 of the United States Housing Act of 1937 (as added by section 411 of NAHA), section 422 of NAHA, and section 442 of NAHA, for the HOPE 1, 2, and 3 programs, respectively. The planning to be assisted is for developing capacity and strategies for marketing available existing housing held by a Federal, State, or local agency to low-income persons for homeownership.

The reason for HUD's approval of this exclusion and exemption is that, since the grants are for developing strategies for increasing homeownership and housing affordability, activities funded by the grants lack the potential for significant environmental impact that would require assessment under NEPA and would not alter any conditions that

would require review or compliance under the other Federal laws and authorities cited in part 50. However, HUD approval of HOPE implementation grants to carry out these strategies may involve physical development or physical change to specific buildings and sites and, therefore, is not exempt from the related laws or (except under HOPE 3, discussed below) categorically excluded from NEPA. Compliance with part 50 is required for approvals of HOPE Implementation grants.

Implementation Grants: HOPE 3

Implementation grants under the HOPE 3 program are authorized by section 443 of NAHA. Eligible activities funded by HOPE 3 implementation grants include activities related to the acquisition, rehabilitation, and sale of existing one- to four-family properties to eligible low-income families (including job training and day care). (See section 405 of the amended HOPE 3 program guidelines.)

In sections 415(b)(20) and 745 of the amended HOPE 3 guidelines, the Department is revising its environmental policy from that published as section 425(b) on February 4, 1991 at 56 FR 4468–4469. In conjunction with sections 415(b)(20) and 745 of the amended HOPE 3 guidelines, this interim rule authorizes a categorical exclusion from the requirement for an environmental assessment under NEPA for HUD approval of HOPE 3 implementation grants, because of the lack of potential for significant environmental impact from activities funded by HOPE 3 implementation grants. The interim rule amends 24 CFR part 50 by adding this categorical exclusion as a new § 50.20(q)(2).

HUD also has determined that the decision point for environmental review of the HOPE 3 implementation grants for compliance with other applicable environmental laws and authorities is not the approval of the award of grants to successful applicants, but rather the approval of *specific* properties for use in a grant receipent's homeowner program. The reason for this change is that applications are not likely to identify specific properties to be used in the HOPE 3 homeownership programs, whereas certain of the environmental authorities require review of specific properties. Before a HOPE 3 recipient may carry out implementing actions on specific properties it proposes to use, HUD will comply with applicable environmental procedures and standards with respect to the proposed properties under 24 CFR part 50, particularly the related Federal environmental laws and authorities at 24 CFR 50.4.

II. Justification for Interim Rule Making

The National Affordable Housing Act (NAHA) authorizes implementation of the HOPE Grant programs by **Federal Register** notice. This rule contains amendments to HUD's environmental regulations that will support the operation of these programs. The amended Notice of Program Guidelines refer to the establishment of the exemption and the categorical exclusions set out in this rule, and structure the HUD review and approval procedure for HOPE 1, 2, and 3 planning grants and HOPE 3 implementation grants accordingly. This rule merely amends part 50 to codify the exemption and exclusions in consonance with the guidelines. Issuance of this rule for immediate effect ensures that part 50 requirements will be consistent with the guidelines when applications are prepared and reviewed under the NOFA for the first round funding of the HOPE programs.

Because Congress authorized use of notices published for immediate effect to implement the HOPE programs, the Department finds that there is good cause to publish these supporting regulatory amendments for immediate effect as well. Public comment is being solicited on the three amended HOPE Notices of Program Guidelines. Final rules will be published codifying these programs within eight months from today. Public comments received in response to the publication of this interim rule will also be taken into account in the related final rule expected to be published at the same time.

Findings and Certifications

The finding and certifications set out in the notices being published today for the HOPE Grant programs cover the amendments being made by this rule.

List of Subjects in 24 CFR Part 50

Environmental impact statements,
Environmental assessments,
Categorical exclusions,
Exempt activities.

Accordingly, 24 CFR part 50 is amended as follows:

PART 50—PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

1. The authority citation for 24 CFR part 50 continues to read as follows:

Authority: Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

2. In subpart D, a new § 50.19 is added to read as follows:

§ 50.19 Exemptions from environmental laws and authorities other than NEPA.

The Department exempts certain activities from the requirements of this part relating to review under the compliance with the environmental laws and authorities listed in § 50.4 of this part. The laws and authorities listed in § 50.4 of this part are not applicable to exempt activities. Exempt activities include the approval of planning grants under the Homeownership and Opportunity for People Everywhere (HOPE) Programs.

3. In subpart D, a new paragraph (q) is added to § 50.20 to read as follows:

§ 50.20 Categorical exclusions.

* * * * *

(q) Approval of:

(1) Planning grants under the Homeownership and Opportunity for People Everywhere (HOPE 1, 2, and 3) Programs; and

(2) Implementation grants under the HOPE for Homeownership of Single Family Homes (HOPE 3) Program.

Dated: December 20, 1991.

Jack Kemp,

Secretary.

[FR Doc. 92–585 Filed 1–13–92; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Parts 500, 515, 520, 530, 535, 550, 560, and 575

Foreign Assets Control, Cuban Assets Control, Foreign Funds Control, Rhodesian Sanctions, Iranian Assets Control, Libyan Sanctions, Iranian Transactions, and Iraqi Sanctions; Regulations

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule, amendments.

SUMMARY: This rule amends the Foreign Assets Control Regulations, 31 CFR part 500, the Cuban Assets Control Regulations, 31 CFR part 515, the Foreign Funds Control Regulations, 31 CFR part 520, the Iranian Assets Control Regulations, 31 CFR part 535, the Libyan Sanctions Regulations, 31 CFR part 550, the Iranian Transactions Regulations, 31 CFR part 560, and the Iraqi Sanctions Regulations, 31 CFR part 575 (collectively, the "Regulations") to remove all requirements in the Regulations for use of specific forms for use in the filing of license applications,

and to delete all references in the Regulations to the activities of the Federal Reserve Bank of New York's Foreign Assets Control Division, which is being closed. The proposed amendments reflect procedural changes regarding the operations of the Office of Foreign Assets Control ("FAC"). This rule also removes 31 CFR part 530, the former Rhodesian Sanctions Regulations, and makes minor corrections to citations.

EFFECTIVE DATE: January 14, 1992.

FOR FURTHER INFORMATION CONTACT: William B. Hoffman, Chief Counsel (tel.: 202/535-6020), or Steven I. Pinter, Chief of Licensing (tel.: 202/535-9449), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: The Regulations currently require applications for specific licenses to engage in transactions prohibited by the Regulations to be filed in duplicate on designated Treasury forms. The FAC Licensing Division has eliminated the requirement that Treasury forms be used to apply for specific licenses. This rule provides instead that specific license applications be made by letter. This rule also deletes all references to the specific licensing activities of FAC performed by the Federal Reserve Bank of New York. The Foreign Assets Control Division of the Federal Reserve Bank of New York will be closed on December 31, 1991. This rule removes Part 530, the Rhodesian Sanctions Regulations, which is no longer in force, and amplifies and corrects certain citations to information disclosure provisions in the Regulations.

Because the Regulations involve a foreign affairs function, Executive Order 12291 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

List of Subjects in 31 CFR Parts 500, 515, 520, 535, 550, 560, 575

Administrative practice and procedure.

For the reasons set forth in the preamble, 31 CFR chapter V is amended as follows:

PART 500—FOREIGN ASSETS CONTROL REGULATIONS

1. The authority citation for part 500 continues to read as follows:

Authority: 50 U.S.C. App. 5, as amended; E.O. 9193, 7 FR 5205, 3 CFR 1938–1943 Cum. Supp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748.

Subpart H—Procedures

§ 500.801 [Amended]

2. In § 500.801(b)(1), remove the sentence "The specific licensing activities of the Office of Foreign Assets Control are performed by the central organization and the Federal Reserve Bank of New York."

3. Section 500.801(b)(2) is revised to read as follows:

(b) * * *

* * * * *

(2) *Applications for specific licenses.* Applications for specific licenses to engage in any transactions prohibited by or pursuant to this part may be filed by letter with the Office of Foreign Assets Control. Any person having an interest in a transaction or proposed transaction may file an application for a license authorizing such transaction, but the applicant for a specific license is required to make full disclosure of all parties in interest to the transaction so that a decision on the application may be made with full knowledge of all relevant facts and so that the identity and location of the persons who know about the transaction may be easily ascertained in the event of inquiry.

4. Section 500.801(b)(3) is revised to read as follows:

(b) * * *

* * * * *

(3) *Information to be supplied.* The applicant must supply all information specified by relevant instructions, and must fully disclose the names of all the parties who are concerned with or interested in the proposed transaction. If the application is filed by an agent, the agent must disclose the name of his principal(s). Such documents as may be relevant shall be attached to each application as a part of such application except that documents previously filed with the Office of Foreign Assets Control may, where appropriate, be incorporated by reference. Applicants may be required to furnish such further information as is deemed necessary to a proper determination by the Office of Foreign Assets Control. Any applicant or other party in interest desiring to present additional information concerning the application may do so at any time. Arrangements for oral presentation may be made with the Office of Foreign Assets Control.

5. In § 500.801(b)(6), remove the words, "or by the Federal Reserve Bank of New York"

6. In § 500.801, paragraph (c) is added to read as follows:

* * * * *

(c) *Address.* License applications, reports, and inquiries should be addressed to the appropriate section or individual within the Office of Foreign Assets Control, or to its Director, at the following address: Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW, Washington, DC 20220.

7. In § 500.803, remove the words, "or the Federal Reserve Bank of New York"

8. In § 500.808(a)(6)(ii), remove the words, "either directly or through the Federal Reserve Bank of New York,".

9. In § 500.808(c), remove the words, "Federal Reserve Bank of New York" and add, in their place, the words, "Office of Foreign Assets Control".

10. Section 500.809 is revised to read as follows:

§ 500.809 Rules governing availability of information.

(a) The records of the Office of Foreign Assets Control required by the Freedom of Information Act (5 U.S.C. 552) to be made available to the public shall be made available in accordance with the definitions, procedures, requirements for payment of fees, and other provisions of the Regulations on the Disclosure of Records of the Departmental Offices and of other bureaus and offices of the Department of Treasury issued under 5 U.S.C. 552 and published in part 1 of this title.

(b) The records of the Office of Foreign Assets Control required by the Privacy Act (5 U.S.C. 552a) to be made available to an individual shall be made available in accordance with the definitions, procedures, requirements for payment of fees, and other provisions of the Regulations on Disclosure of Records of the Departmental Offices and of other bureaus and Offices of the Department of the Treasury issued under 5 U.S.C. 552a and published in part 1 of this title.

(c) Any form used in connection with the Foreign Assets Control Regulations may be obtained in person from or by writing to the Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

PART 515—CUBAN ASSETS CONTROL REGULATIONS

1. The authority citation for part 515 continues to read as follows:

Authority: 50 U.S.C. App. 5, as amended; 22 U.S.C. 2370(a); Proc. 3447, 27 FR 1085, 3 CFR, 1959–1963 Comp.; E.O. 9193, 7 FR 5205, 3 CFR

1938–1943 Cum. Supp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748.

Subpart H—Procedures

§ 515.801 [Amended]

2. In § 515.801(b)(1), remove the sentence "The specific licensing activities of the Office of Foreign Assets Control are performed by the central organization and the Federal Reserve Bank of New York."

3. Section 515.801(b)(2) is revised to read as follows:

(b) * * *

* * * * *

(2) *Applications for specific licenses.* Applications for specific licenses to engage in any transactions prohibited by or pursuant to this part may be filed by letter with the Office of Foreign Assets Control. Any person having an interest in a transaction or proposed transaction may file an application for a license authorizing such transaction, but the applicant for a specific license is required to make full disclosure of all parties in interest to the transaction so that a decision on the application may be made with full knowledge of all relevant facts and so that the identity and location of the persons who know about the transaction may be easily ascertained in the event of inquiry.

4. Section 515.801(b)(3) is revised to read as follows:

(b) * * *

* * * * *

(3) *Information to be supplied.* The applicant must supply all information specified by relevant instructions, and must fully disclose the names of all the parties who are concerned with or interested in the proposed transaction. If the application is filed by an agent, the agent must disclose the name of his principal(s). Such documents as may be relevant shall be attached to each application as a part of such application except that documents previously filed with the Office of Foreign Assets Control may, where appropriate, be incorporated by reference. Applicants may be required to furnish such further information as is deemed necessary to a proper determination by the Office of Foreign Assets Control. Any applicant or other party in interest desiring to present additional information concerning the application may do so at any time. Arrangements for oral presentation may be made with the Office of Foreign Assets Control.

5. In § 515.801(b)(6), remove the words "or by the Federal Reserve Bank of New York".

6. In § 515.801, paragraph (c) is added to read as follows:

* * * * *

(c) *Address.* License applications, reports, and inquiries should be addressed to the appropriate section or individual within the Office of Foreign Assets Control, or to its Director, at the following address: Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

7. In § 515.803, remove the words "of the Federal Reserve Bank of New York".

8. In § 515.808(a)(6)(iii), remove the words "either directly or through the Federal Reserve Bank of New York,".

9. In § 515.808(d), remove the words, "Federal Reserve Bank of New York" and add, in their place, the words, "Office of Foreign Assets Control".

10. Section 515.809 is revised to read as follows:

§ 515.809 Rules governing availability of information.

(a) The records of the Office of Foreign Assets Control required by the Freedom of Information Act (5 U.S.C. 552) to be made available to the public shall be made available in accordance with the definitions, procedures, requirements for payment of fees, and other provisions of the Regulations on the Disclosure of Records of the Departmental Offices and of other bureaus and offices of the Department of Treasury issued under 5 U.S.C. 552 and published in part 1 of this title.

(b) The records of the Office of Foreign Assets Control required by the Privacy Act (5 U.S.C. 552a) to be made available to an individual shall be made available in accordance with the definitions, procedures, requirements for payment of fees, and other provisions of the Regulations on Disclosure of Records of the Departmental Offices and of other bureaus and offices of the Department of the Treasury issued under 5 U.S.C. 552a and published in part 1 of this title.

(c) Any form used in connection with the Cuban Assets Control Regulations may be obtained in person from or by writing to the Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

PART 520—FOREIGN FUNDS CONTROL REGULATIONS

1. The authority citation for part 520 is revised to read as follows:

Authority: 50 U.S.C. App. 5, as amended; E.O. 8389, 5 FR 1400, as amended by E.O 8785, 6 FR 2897, E.O. 8832, 6 FR 3715, E.O. 8963, 6 FR 2897, E.O. 8832, 6 FR 3715, E.O. 8963, 6 FR 6348, E.O. 8998, 6 FR 6785, E.O. 9193, 7 FR 5205; 3 CFR, 1938–1943 Cum. Supp., p. 1174; E.O. 10348, 17 FR 3769, 3 CFR, 1949–1953 Comp., p. 871; E.O. 11281, 31 FR 7215, 3 CFR, 1966–1970 Comp., p. 548.

Subpart H—Procedures

§ 520.801 [Amended]

2. In § 520.801(b)(1), remove the sentence "The specific licensing activities of the Office of Foreign Assets Control are performed by the central organization and the Federal Reserve Bank of New York".

3. Section 520.801(b)(2) is revised to read as follows:

(b) * * *

* * * * *

(2) *Applications for specific licenses.* Applications for specific licenses to engage in any transactions prohibited by or pursuant to this part may be filed by letter with the Office of Foreign Assets Control. Any person having an interest in a transaction or proposed transaction may file an application for a license authorizing such transaction, but the applicant for a specific license is required to make full disclosure of all parties in interest to the transaction so that a decision on the application may be made with full knowledge of all relevant facts and so that the identity and location of the persons who know about the transaction may be easily ascertained in the event of inquiry.

4. Section 520.801(b)(3) is revised to read as follows:

(b) * * *

* * * * *

(3) *Information to be supplied.* The applicant must supply all information specified by relevant instructions, and must fully disclose the names of all the parties who are concerned with or interested in the proposed transaction. If the application is filed by an agent, the agent must disclose the name of his principal(s). Such documents as may be relevant shall be attached to each application as a part of such application except that documents previously filed with the Office of Foreign Assets Control may, where appropriate, be incorporated by reference. Applicants may be required to furnish such further information as is deemed necessary to a proper determination by the Office of Foreign Assets Control. Any applicant or other party in interest desiring to present additional information concerning the application may do so at any time. Arrangements for oral presentation may be made with the Office of Foreign Assets Control.

5. In § 520.801(b)(6), remove the words "or by the Federal Reserve Bank of New York".

6. In § 520.801 paragraph (c) is added to read as follows:

* * * * *

(c) *Address.* License applications, reports, and inquiries should be addressed to the appropriate section or individual within the Office of Foreign Assets Control, or to its Director, at the following address: Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

7. In § 520.803, remove the words "of the Federal Reserve Bank of New York".

8. Section 520.809 is revised to read as follows:

§ 520.809 Rules governing availability of information.

(a) The records of the Office of Foreign Assets Control required by the Freedom of Information Act (5 U.S.C. 552) to be made available to the public shall be made available in accordance with the definitions, procedures, requirements for payment of fees, and other provisions of the Regulations on the Disclosure of Records of the Departmental Offices and of other bureaus and offices of the Department of the Treasury issued under 5 U.S.C. 552 and published in part 1 of this title.

(b) The records of the Office of Foreign Assets Control required by the Privacy Act (5 U.S.C. 552a) to be made available to an individual shall be made available in accordance with the definitions, procedures, requirements for payment of fees, and other provisions of the Regulations on Disclosure of Records of the Departmental Offices and of other bureaus and offices of the Department of the Treasury issued under 5 U.S.C. 552a and published in part 1 of this title.

(c) Any form used in connection with the Foreign Funds Control Regulations may be obtained in person from or by writing to the Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

PART 530—[REMOVED]

Part 530 is removed.

PART 535—IRANIAN ASSETS CONTROL REGULATIONS

1. The authority citation for part 535 continues to read as follows:

Authority: Secs. 201–207, 91 Stat. 1626; 50 U.S.C. 1701–1706; E.O. 12170, 44 FR 65729; E.O. 12205, 45 FR 24099; E.O. 12211, 45 FR 26685.

Subpart H—Procedures

§ 535.801 [Amended]

2. In § 535.801(b)(1), remove the sentence "The specific licensing activities of the Office of Foreign Assets Control are performed by its Washington Office and by the Federal Reserve Bank of New York".

3. Section 535.801(b)(2) is revised to read as follows:

(b) * * *

* * * * *

(2) *Applications for specific licenses.* Applications for specific licenses to engage in any transactions prohibited by or pursuant to this part may be filed by letter with the Office of Foreign Assets Control. Any person having an interest in a transaction or proposed transaction may file an application for a license authorizing such transaction, but the applicant for a specific license is required to make full disclosure of all parties in interest to the transaction so that a decision on the application may be made with full knowledge of all relevant facts and so that the identity and location of the persons who know about the transaction may be easily ascertained in the event of inquiry.

4. Section 535.801(b)(3) is revised to read as follows:

(b) * * *

* * * * *

(3) *Information to be supplied.* The applicant must supply all information specified by relevant instructions, and must fully disclose the names of all the parties who are concerned with or interested in the proposed transaction. If the application is filed by an agent, the agent must disclose the name of his principal(s). Such documents as may be relevant shall be attached to each application as a part of such application except that documents previously filed with the Office of Foreign Assets Control may, where appropriate, be incorporated by reference. Applicants may be required to furnish such further information as is deemed necessary to a proper determination by the Office of Foreign Assets Control. Any applicant or other party in interest desiring to present additional information concerning the application may do so at any time. Arrangements for oral presentation may be made with the Office of Foreign Assets Control.

5. In § 535.801(b)(6), remove the words, "or by the Federal Reserve Bank of New York".

6. In § 535.801, paragraph (c) is added to read as follows:

* * * * *

(c) *Address.* License applications, reports, and inquiries should be addressed to the appropriate section or individual within the Office of Foreign Assets Control, or to its Director, at the following address: Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

7. In § 535.803, remove the words, "or the Federal Reserve Bank of New York".

8. Section 535.807 is added to subpart H to read as follows:

§ 535.807 Rules governing availability of information.

(a) The records of the Office of Foreign Assets Control required by the Freedom of Information Act (5 U.S.C. 552) to be made available to the public shall be made available in accordance with the definitions, procedures, requirements for payment of fees, and other provisions of the Regulations on the Disclosure of Records of the Departmental Offices and of other bureaus and offices of the Department of the Treasury issued under 5 U.S.C. 552 and published in part 1 of this title.

(b) The records of the Office of Foreign Assets Control required by the Privacy Act (5 U.S.C. 552a) to be made available to an individual shall be made available in accordance with the definitions, procedures, requirements for payment of fees, and other provisions of the Regulations on Disclosure of Records of the Departmental Offices and of other bureaus and offices of the Department of the Treasury issued under 5 U.S.C. 552a and published in part 1 of this title.

(c) Any form used in connection with the Iranian Assets Control Regulations may be obtained in person from or by writing to the Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

PART 550—LIBYAN SANCTIONS REGULATIONS

1. The authority citation for part 550 continues to read as follows:

Authority: 50 U.S.C. 1701 et seq.; E.O. 12543, 51 FR 875, Jan. 9, 1986; E.O. 12544, 51 FR 1235, Jan. 10, 1986.

Subpart H—Procedures

§ 550.801 [Amended]

2. In § 550.801(b)(1), remove the sentence "The specific licensing activities of the Office of Foreign Assets Control are performed by its Washington office and by the Foreign Assets Control Division of the Federal Reserve Bank of New York".

3. Section 550.801(b)(2) is revised to read as follows:

(b) * * *

* * * * *

(2) *Applications for specific licenses.* Applications for specific licenses to engage in any transactions prohibited by or pursuant to this part may be filed by letter with the Office of Foreign Assets Control. Any person having an interest in a transaction or proposed transaction may file an application for a license authorizing such transaction, but the applicant for a specific license is required to make full disclosure of all parties in interest to the transaction so that a decision on the application may be made with full knowledge of all relevant facts and so that the identity and location of the persons who know about the transaction may be easily ascertained in the event of inquiry.

4. Section 550.801(b)(3) is revised to read as follows:

(b) * * *

* * * * *

(3) *Information to be supplied.* The applicant must supply all information specified by relevant instructions, and must fully disclose the names of all the parties who are concerned with or interested in the proposed transaction. If the application is filed by an agent, the agent must disclose the name of his principal(s). Such documents as may be relevant shall be attached to each application as a part of such application except that documents previously filed with the Office of Foreign Assets Control may, where appropriate, be incorporated by reference. Applicants may be required to furnish such further information as is deemed necessary to a proper determination by the Office of Foreign Assets Control. Any applicant or other party in interest desiring to present additional information concerning the application may do so at any time. Arrangements for oral presentation may be made with the Office of Foreign Assets Control.

5. In § 550.801(b)(6), remove the words "or by the Federal Reserve Bank of New York".

6. In § 550.801, paragraph (c) is added to read as follows:

* * * * *

(c) *Address.* License applications, reports, and inquiries should be addressed to the appropriate section or individual within the Office of Foreign Assets Control, or to its Director, at the following address: Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

7. In § 550.802, remove the words "or the Federal Reserve Bank of New York".

8. Section 550.806 is revised to read as follows:

§ 550.806 Rules governing availability of information.

(a) The records of the Office of Foreign Assets Control required by the Freedom of Information Act (5 U.S.C. 552) to be made available to the public shall be made available in accordance with the definitions, procedures, requirements for payment of fees, and other provisions of the Regulations on the Disclosure of Records of the Departmental Offices and of other bureaus and offices of the Department of Treasury issued under 5 U.S.C. 552 and published in part 1 of this title.

(b) The records of the Office of Foreign Assets Control required by the Privacy Act (5 U.S.C. 552a) to be made available to an individual shall be made available in accordance with the definitions, procedures, requirements for payment of fees, and other provisions of the Regulations on Disclosure of Records of the Departmental Offices and of other bureaus and offices of the Department of the Treasury issued under 5 U.S.C. 552a and published in part 1 of this title.

(c) Any form used in connection with the Libyan Sanctions Regulations may be obtained in person from or by writing to the Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

9. In § 550.807(a)(7)(iii), remove the words "either directly or through the Federal Reserve Bank of New York,".

10. In § 550.807(c), remove the words, "Federal Reserve Bank of New York, Foreign Assets Control Division, 33 Liberty Street, New York, New York 10045" and add, in their place, the words, "Office of Foreign Assets Control".

PART 560—IRANIAN TRANSACTIONS REGULATIONS

1. The authority citation for part 560 continues to read as follows:

Authority: 22 U.S.C. 2349aa–9; E.O. 12613, 52 FR 41940, Oct. 30, 1987.

Subpart H—Procedures

§ 560.801 [Amended]

2. In § 560.801(b)(1), remove the sentence "The specific licensing activities of the Office of Foreign Assets Control are performed by its Washington Office and by the Foreign Assets Control Division of the Federal Reserve Bank of New York".

3. Section 560.801(b)(2) is revised to read as follows:

(b) * * *

* * * * *

(2) *Applications for specific licenses.* Applications for specific licenses to engage in any transactions prohibited by or pursuant to this part may be filed by letter with the Office of Foreign Assets Control. Any person having an interest in a transaction or proposed transaction may file an application for a license authorizing such transaction, but the applicant for a specific license is required to make full disclosure of all parties in interest to the transaction so that a decision on the application may be made with full knowledge of all relevant facts and so that the identity and location of the persons who know about the transaction may be easily ascertained in the event of inquiry.

4. Section 560.801(b)(3) is revised to read as follows:

(b) * * *

* * * * *

(3) *Information to be supplied.* The applicant must supply all information specified by relevant instructions, and must fully disclose the names of all the parties who are concerned with or interested in the proposed transaction. If the application is filed by an agent, the agent must disclose the name of his principal(s). Such documents as may be relevant shall be attached to each application as a part of such application except that documents previously filed with the Office of Foreign Assets Control may, where appropriate, be incorporated by reference. Applicants may be required to furnish such further information as is deemed necessary to a proper determination by the Office of Foreign Assets Control. Any applicant or other party in interest desiring to present additional information concerning the application may do so at any time. Arrangements for oral presentation may be made with the Office of Foreign Assets Control.

5. In § 560.801(b)(6), remove the words "or by the Federal Reserve Bank of New York".

6. In § 560.801, paragraph (c) is added to read as follows:

* * * * *

(c) *Address.* License applications, reports, and inquiries should be addressed to the appropriate section or individual within the Office of Foreign Assets Control, or to its Director, at the following address: Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

7. In § 560.802, remove the words "or the Federal Reserve Bank of New York"

8. In § 560.806(b)(3), remove the words "either directly or through the Federal Reserve Bank of New York,"

9. In § 560.806(d), remove the words "Federal Reserve Bank of New York, Foreign Assets Control Division, 33 Liberty Street, New York, New York 10045" and add, in their place, the words, "Office of Foreign Assets Control".

10. Section 560.807 is revised to read as follows:

§ 560.807 Rules governing availability of information.

(a) The records of the Office of Foreign Assets Control required by the Freedom of Information Act (5 U.S.C. 552) to be made available to the public shall be made available in accordance with the definitions, procedures, requirements for payment of fees, and other provisions of the Regulations on the Disclosure of Records of the Departmental Offices and of other bureaus and offices of the Department of Treasury issued under 5 U.S.C. 552 and published in part 1 of this title.

(b) The records of the Office of Foreign Assets Control required by the Privacy Act (5 U.S.C. 552a) to be made available to an individual shall be made available in accordance with the definitions, procedures, requirements for payment of fees, and other provisions of the Regulations on Disclosure of Records of the Departmental Offices and of other bureaus and offices of the Department of Treasury issued under 5 U.S.C. 552a and published in part 1 of this title.

(c) Any form used in connection with the Iranian Transaction Regulations may be obtained in person from or by writing to the Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

PART 575—IRAQI SANCTIONS REGULATIONS

1. The authority citation for part 575 continues to read as follows:

Authority: 50 U.S.C. 1701 *et seq.*; 50 U.S.C. 1601 *et seq.*; 22 U.S.C. 287c; Pub. L. 101–513, 104 Stat. 2047–55 (Nov. 5, 1990); 3 U.S.C. 301; E.O. 12772, 55 FR 31803 (Aug. 3, 1990); E.O. 12724, 55 FR 33089 (Aug. 13, 1990).

Subpart H—Procedures

2. Section 575. 806 is revised to read as follows:

§ 575.806 Rules governing availability of information.

(a) The records of the Office of Foreign Assets Control required by the Freedom of Information Act (5 U.S.C. 552) to be made available to the public shall be made available in accordance with the definitions, procedures, requirements for payment of fees, and other provisions of the Regulations on the Disclosure of Records of the Departmental Offices and of other bureaus and offices of the Department of Treasury issued under 5 U.S.C. 552 and published in part 1 of this title.

(b) The records of the Office of Foreign Assets Control required by the Privacy Act (5 U.S.C. 552a) to be made available to an individual shall be made available in accordance with the definitions, procedures, requirements for payment of fees, and other provisions of the Regulations on Disclosure of Records of the Departmental Offices and of other bureaus and offices of the Department of Treasury issued under 5 U.S.C. 552a and published in part 1 of this title.

(c) Any form used in connection with the Iraqi Sanctions Regulations may be obtained in person from or by writing to the Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Dated: December 19, 1991

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: December 23, 1991

John P. Simpson,

Acting Assistant Secretary (Enforcement).

[FR Doc. 92–871 Filed 1–9–92; 11:50 am]

BILLING CODE 4810–25–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD2–91–03]

Drawbridge Operation Regulations; Arkansas River

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This action amends the drawbridge operating regulations on the Arkansas River to accurately describe the method to request opening of the lift spans for the Baring Cross Bridge at Mile 119.6, the Junction Bridge at Mile 118.7, and the Rock Island Railroad Bridge at Mile 118.2 when necessary for transit. These changes reflect the creation of a Regulated Navigation Area (RNA) encompassing mile 118.2 to mile 125.4 at Little Rock, Arkansas.

EFFECTIVE DATE: This rule is effective on February 13, 1992.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Second Coast Guard District, 1222 Spruce Street, St. Louis, Missouri, 63103–2832, (314) 539–3724.

SUPPLEMENTARY INFORMATION: On September 26, 1991, the Coast Guard published a Notice of Proposed Rulemaking in the **Federal Register** at 56 FR 48770. Interested persons were invited to participate in this rulemaking by submitting written views, comments, data, or arguments no later than November 12, 1991. Five comments were received.

Drafting Information

The drafters of this regulation are Wanda G. Renshaw, Project Officer, Commander(ob), Second Coast Guard District, 1222 Spruce Street, St. Louis, Missouri, 63103–2832, and Lieutenant M.A. Suire, Project Attorney, Commander(dl), 1222 Spruce Street, St. Louis, Missouri, 63103–2832.

Discussion of Regulation

Three vertical lift drawbridges span the Arkansas River in the Little Rock, Arkansas harbor. The Rock Island Railroad Bridge at mile 118.2 is currently maintained in the open position. The Baring Cross Bridge at mile 119.6 and the Junction Bridge at mile 118.7 are maintained in the closed position and are remotely operated by a dispatcher in North Little Rock, Arkansas. The regulations must correctly describe the method used for requesting opening of the draws in light of the RNA established by 3 CFR 165.203.

Discussion of Comments

Of the comments received, two expressed no objection to the proposed changes. The remaining three consist of four separate comments on the proposal. Each is addressed below:

Comment: "For vessels with lower horsepower ratings or unusual situations I think it could be made clearer that they have the right to wait at the lock or cells until the bridges are opened."

This comment appears to pertain to transit during periods of high velocity flow. Once the flow rate reaches 70,000 cubic feet per second at Murray Lock & Dam, all vessels must then comply with the provisions of the RNA established at 33 CFR 165.203, which requires the vessels to transit from mile 125.4 to mile 118.2 unimpeded. This regulation complements 33 CFR 165.203 during high velocity flow by requiring the downbound vessel to coordinate its passage with the remote drawbridge operator and contemplates that this coordination will take place either before the vessel departs Murray Lock & Dam or before departing the mooring cells at mile 121.5. The Coast Guard

acknowledges that the proposal was unclear in this regard and has attempted to clarify the final regulation in paragraph (2).

Comment: "[T]he Rock Island Bridge at Mile 118.2 is maintained in the open position. This bridge is no longer used and does not even have any tracks approaching it any longer."

This comment was received from two separate sources. The Coast Guard has confirmed with the bridge owner that the Rock Island Railroad bridge is presently maintained in the open position, but that the machinery to raise or lower the span is in place although the owner reports it would require mechanical and electrical overhaul to make the machinery fully functional. The Coast Guard recognizes that the likelihood that this bridge will ever be placed in the closed position is low, but believes that the possibility that it may be lowered for some purpose, such as during maintenance or overhaul, requires that appropriate regulations be in place for vessels desiring passage through the bridge to have a means to request that it be opened. The Coast Guard has amended the Discussion of Regulation paragraph above and part 117.123(b) of the proposed regulation to reflect the actual status of the bridge but does not believe any change to the procedures to be used to request opening is warranted.

Comment: "I feel that the wording in part 117.123(b)(1) is adequate and in fact is the way in which this reach is run on a daily basis."

No additional changes to the proposed rule were deemed necessary as a result of this comment and none were made.

Comment: "[T]he regulations you propose should not apply [to retractable pilot house towboats] and we would like this clarified."

The Coast Guard does not believe that the proposed regulation contemplated opening a drawbridge where it was not necessary. If a vessel can operate in, around or through the drawbridges during periods of normal flow or in accordance with the RNA at 33 CFR 165.203 during periods of high velocity flow without requiring the drawbridges to be opened, then the drawbridges need not be opened. The Coast Guard has clarified this common-sense approach in the final rule. No additional changes to the proposed rule were deemed necessary as a result of this comment and none were made.

Economic Assessment and Certification

This regulation has been reviewed under the provisions of Executive Order 12291 and determined not to be a major rule. In addition, this rulemaking is considered to be nonsignificant under the guidelines of DOT Order 2100.5 dated May 22, 1980, Policies and Procedures for Simplification, Analysis, and Review of Regulations. An economic evaluation has not been conducted and is deemed unnecessary as the impact of the proposed action is expected to be minimal. Revising the drawbridge regulations to accurately reflect the method used to request the opening of drawbridges in an RNA is justified. Pursuant to 5 U.S.C. 601, et seq., Regulatory Flexibility Act, it is certified that this action will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment and Certification

This action has been reviewed by the Coast Guard and has been determined to be categorically excluded from further environmental documentation in accordance with paragraph 2.B.2.g.(5) of the NEPA Implementing Procedures, COMDTINST M16475.1B. A copy of the Categorical Exclusion Document is available for review on the docket.

Federalism Assessment and Certification

This action has been analyzed in accordance with the principles and criteria outlined in Executive Order 12612. It has been determined that this action does not have sufficient federalism implications to warrant preparation of a Federalism Assessment. As noted above, this action amends the method used to request opening of drawbridges located in an RNA.

Collection of Information

This rule contains no collection of information requirement under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq*).

List of Subjects in 33 CFR Part 117

Bridges.

Final Regulation

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

PART 117—[AMENDED]

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05(g).

2. Section 117.123 is amended by revising paragraph (a) introductory text, redesignating paragraph (b) as paragraph (c) and revising the introductory text, and adding a new paragraph (b) to read as follows:

§ 117.123 Arkansas and White Rivers—Automated Railroad Bridges.

(a) Across the Arkansas River, the draw of the Cotton Belt Railroad (Rob Roy) Bridge, Mile 67.4, is maintained in the closed position and is remotely operated. The following signals shall be used:

* * * * *

(b) The draws of the Junction Railroad Bridge at mile 118.7 and the Baring Cross Railroad Bridge at mile 119.6, Arkansas River, at Little Rock, are maintained in the closed position and are remotely operated. The draw of the Rock Island Railroad Bridge at mile 118.2, Arkansas River, at Little Rock, is maintained in the open position. Use the following procedures to request opening of these bridges when necessary for transit;

(1) Normal Flow Procedures. Any upbound or downbound vessel which requires opening the draw of any of these bridges shall establish contact by radiotelephone with the remote drawbridge operator on VHF–FM Channel 13 in North Little Rock, Arkansas. The remote drawbridge operator will advise the vessel whether the requested span can be immediately opened and maintain constant contact with the vessel until the requested span has opened and the vessel passage has been completed. If any or all of the drawbridges cannot be opened immediately, the remote drawbridge operator will notify the calling vessel and provide an estimated time for individual drawbridge openings.

(2) High Velocity Flow Procedures. The area from mile 118.2 to mile 125.4 is a regulated navigation area (RNA) as described in 33 CFR 165.203. During periods of high velocity flow, which is defined as a flow rate of 70,000 cubic feet per second or greater at the Murray Lock and Dam, mile 125.4, downbound vessels which require that the draw of these three bridges be opened for unimpeded passage shall contact the remote drawbridge operator on VHF–FM Channel 13 either before departing Murray Lock and Dam, or before departing the mooring cells at Mile 121.5 to ensure that the Rock Island, Junction,

and Baring Cross Railroad drawbridges are opened. The remote drawbridge operator shall immediately respond to the vessel's call, ensure that all three drawbridges are open for pasage, and ensure that they remain in the open positon until the downbound vessel has passed through each drawbridge. If a closed drawbridge cannot be opened immediately for unimpeded passage in accordance with 33 CFR 163.203, the remote drawbridge operator will immediately notify the downbound vessel and provide an estimated time for drawbridge openings. Upbound vessels shall request openings in accordance with the normal flow procedures as set forth above. The remote drawbridge operator shall keep all approaching vessels informed of the position of the drawbridge spans.

(c) The draw of the Burlington Northern Railroad Bridge, Mile 300.8 Arkansas River at Van Buren, and the Missouri Pacific Railroad Bridge, Mile 7.5 White River at Benzal, are maintained in the open position with a minimum vertical clearance of 52 feet except as follows:

* * * * *

Dated: December 13, 1991.

N.T. Saunders,

Rear Admiral (Lower Half) U.S. Coast Guard, Commander, Second Coast Guard District.

[FR Doc. 92-532 Filed 1-13-92; 8:45 am]

BILLING CODE 4910-14-M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1191

[Docket Nos. 90-2, 90-4]

RIN 3014-AA09

Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Correction

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Correction to final guidelines.

SUMMARY: This document contains corrections to the Americans with Disabilities Act (ADA) Accessibility Guildelines for Buildings and Facilities. The guidelines were published to assist the Department of Justice to establish accessibility standards for new construction and alterations in places of public accommodation and commercial facilities covered by title III of the ADA and the Department of Transportation to establish accessibility standards for transportation facilities covered by title II of the ADA.

EFFECTIVE DATE: January 14, 1992.

FOR FURTHER INFORMATION CONTACT: James Raggio, Office of the General Counsel, Architectural and Transportation Barriers Compliance Board, 1111-18th Street, NW., suite 501, Washington, DC 20036. Telephone (202) 653-7834 (Voice/TDD). This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On July 26, 1991, the Architectural and Transportation Barriers Compliance Board published the Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities in the **Federal Register**. See 56 FR 35408, as corrected at 56 FR 38174 (August 12, 1991). The guidelines appear as an appendix to 36 CFR part 1191. The guidelines were amended on September 6, 1991 to include additional requirements for transportation facilities. See 56 FR 45500 (September 6, 1991). As published, the guidelines contained errors which are corrected by this notice.

Allen B. Clark, Jr.,

Chairman, Architectural and Transportation Barriers Compliance Board.

The following corrections are made in the Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities published in the **Federal Register** on July 26, 1991 (56 FR 35408), as corrected on August 12, 1991 (56 FR 38174).

1. On page 35511, page 53 of the appendix to part 1191 is corrected by adding in the first sentence of section 4.30.4 the words "(0.8mm) minimum" after "1/32 in".

2. On page 35520, page 62 of the appendix to part 1191 is corrected by changing the third line in the first column of the table in paragraph (1) of section 7.3 from "8-15" to "9-15".

Pages 53 and 62 of the appendix to part 1191 are republished with the corrections included to read as follows:

BILLING CODE 8150-01-M

4.29 *Detectable* Warnings.

4.29.1 General. *Detectable* warnings *required by 4.1 and 4.7* shall comply with 4.29.

4.29.2* *Detectable* Warnings on Walking Surfaces. *Detectable* warnings shall consist of *raised truncated domes with a diameter of nominal 0.9 in (23 mm), a height of nominal 0.2 in (5 mm) and a center-to-center spacing of nominal 2.35 in (60 mm) and* shall contrast *visually* with *adjoining surfaces, either light-on-dark, or dark-on-light.*

The material used to provide contrast shall be an integral part of the walking surface. Detectable warnings used on interior surfaces shall differ from adjoining walking surfaces in resiliency or sound-on-cane contact.

4.29.3 *Detectable* Warnings on Doors To Hazardous Areas. *(Reserved).*

4.29.4 *Detectable* Warnings at Stairs. *(Reserved).*

4.29.5 *Detectable* Warnings at Hazardous Vehicular Areas. If a walk crosses or adjoins a vehicular way, *and the walking surfaces are not separated by* curbs, railings, or other elements *between the pedestrian areas and vehicular areas*, the boundary between the areas shall be defined by a continuous *detectable* warning *which is* 36 in (915 mm) wide, complying with 4.29.2.

4.29.6 *Detectable* Warnings at Reflecting Pools. The edges of reflecting pools shall be protected by railings, walls, curbs, or *detectable* warnings complying with 4.29.2.

4.29.7 Standardization. *(Reserved).*

4.30 Signage.

4.30.1* General. Signage *required to be accessible by 4.1 shall comply with the applicable provisions of 4.30.*

4.30.2* Character Proportion. Letters and numbers on signs shall have a width-to-height ratio between 3:5 and 1:1 and a stroke-width-to-height ratio between 1:5 and 1:10.

4.30.3 *Character Height.* *Characters and numbers on signs shall be sized according to the viewing distance from which they are to be read. The minimum height is measured using an upper case X. Lower case characters are permitted.*

Height Above Finished Floor	*Minimum Character Height*
Suspended or Projected Overhead in compliance with 4.4.2	*3 in. (75 mm) minimum*

4.30.4* Raised *and Brailled* Characters *and Pictorial Symbol Signs (Pictograms).* Letters and numerals shall be raised 1/32 in (0.8 mm) minimum, *upper case*, sans serif *or simple serif type and shall be accompanied with Grade 2 Braille.* Raised characters shall be at least 5/8 in (16 mm) high, but no higher than 2 in (50 mm). *Pictograms shall be accompanied by the equivalent verbal description placed directly below the pictogram. The border dimension of the pictogram shall be 6 in (152 mm) minimum in height.*

4.30.5* *Finish and Contrast.* *The characters and background of signs shall be eggshell, matte, or other non-glare finish.* Characters and symbols shall contrast with their background — either light characters on a dark background or dark characters on a light background.

4.30.6 *Mounting Location and Height.* *Where permanent identification is provided for rooms and spaces, signs shall be installed on the wall adjacent to the latch side of the door. Where there is no wall space to the latch side of the door, including at double leaf doors, signs shall be placed on the nearest adjacent wall. Mounting height shall be 60 in (1525 mm) above the finish floor to the centerline of the sign. Mounting location for such signage shall be so that a person may approach within 3 in (76 mm) of signage without encountering protruding objects or standing within the swing of a door.*

4.30.7* Symbols of Accessibility.

(1) Facilities and elements required to be identified as accessible by 4.1 shall use the international symbol of accessibility. The

8.0 Libraries

7.3* Check-out Aisles.

(1) In new construction, accessible check-out aisles shall be provided in conformance with the table below:

Total Check-out Aisles of Each Design	Minimum Number of Accessible Check-out Aisles (of each design)
1 – 4	1
5 – 8	2
9 – 15	3
over 15	3, plus 20% of additional aisles

EXCEPTION: In new construction, where the selling space is under 5000 square feet, only one check-out aisle is required to be accessible.

EXCEPTION: In alterations, at least one check-out aisle shall be accessible in facilities under 5000 square feet of selling space. In facilities of 5000 or more square feet of selling space, at least one of each design of check-out aisle shall be made accessible when altered until the number of accessible check-out aisles of each design equals the number required in new construction.

Examples of check-out aisles of different "design" include those which are specifically designed to serve different functions. Different "design" includes but is not limited to the following features - length of belt or no belt; or permanent signage designating the aisle as an express lane.

(2) Clear aisle width for accessible check-out aisles shall comply with 4.2.1 and maximum adjoining counter height shall not exceed 38 in (965 mm) above the finish floor. The top of the lip shall not exceed 40 in (1015 mm) above the finish floor.

(3) Signage identifying accessible check-out aisles shall comply with 4.30.7 and shall be mounted above the check-out aisle in the same location where the check-out number or type of check-out is displayed.

7.4 Security Bollards. Any device used to prevent the removal of shopping carts from store premises shall not prevent access or egress to people in wheelchairs. An alternate entry that is equally convenient to that provided for the ambulatory population is acceptable.

8. LIBRARIES.

8.1 General. In addition to the requirements of 4.1 to 4.35, the design of all public areas of a library shall comply with 8, including reading and study areas, stacks, reference rooms, reserve areas, and special facilities or collections.

8.2 Reading and Study Areas. At least 5 percent or a minimum of one of each element of fixed seating, tables, or study carrels shall comply with 4.2 and 4.32. Clearances between fixed accessible tables and between study carrels shall comply with 4.3.

8.3 Check-Out Areas. At least one lane at each check-out area shall comply with 7 2(1). Any traffic control or book security gates or turnstiles shall comply with 4.13.

8.4 Card Catalogs and Magazine Displays. Minimum clear aisle space at card catalogs and magazine displays shall comply with Fig. 55. Maximum reach height shall comply with 4.2, with a height of 48 in (1220 mm) preferred irrespective of approach allowed.

8.5 Stacks. Minimum clear aisle width between stacks shall comply with 4.3, with a minimum clear aisle width of 42 in (1065 mm) preferred where possible. Shelf height in stack areas is unrestricted (see Fig. 56).

BILLING CODE 8150-01-C

The following corrections are made in the amendment to the Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities pertaining to transportation facilities published in the **Federal Register** on September 6, 1991 (56 FR 45500).

1. On page 45524, page 70 of the appendix to part 1191 is corrected by adding in the fifth line of paragraph (4) of section 10.3.2 the word "is" before "within".

2. On page 45524, page 70 of the appendix to part 1191 in the seventh line of Exception 2 to paragraph (4) of section 10.3.2 the words "36 CFR Part 1192" are corrected to read "36 CFR part 1192, or 49 CFR part 38,".

Page 70 of the appendix to part 1191 is republished with the corrections included to read as follows:

BILLING CODE 8150-01-M

10.3.2 Existing Facilities: Key Stations.

(15) Where clocks are provided for use by the general public, the clock face shall be uncluttered so that its elements are clearly visible. Hands, numerals, and/or digits shall contrast with the background either light-on-dark or dark-on-light. Where clocks are mounted overhead, numerals and/or digits shall comply with 4.30.3. Clocks shall be placed in uniform locations throughout the facility and system to the maximum extent practicable.

(16) Where provided in below grade stations, escalators shall have a minimum clear width of 32 inches. At the top and bottom of each escalator run, at least two contiguous treads shall be level beyond the comb plate before the risers begin to form. All escalator treads shall be marked by a strip of clearly contrasting color, 2 inches in width, placed parallel to and on the nose of each step. The strip shall be of a material that is at least as slip resistant as the remainder of the tread. The edge of the tread shall be apparent from both ascending and descending directions.

(17) Where provided, elevators shall be glazed or have transparent panels to allow an unobstructed view both in to and out of the car. Elevators shall comply with 4.10.

EXCEPTION: Elevator cars with a clear floor area in which a 60 inch diameter circle can be inscribed may be substituted for the minimum car dimensions of 4.10, Fig. 22.

(18) Where provided, ticketing areas shall permit persons with disabilities to obtain a ticket and check baggage and shall comply with 7.2.

(19) Where provided, baggage check-in and retrieval systems shall be on an accessible route complying with 4.3, and shall have space immediately adjacent complying with 4.2. If unattended security barriers are provided, at least one gate shall comply with 4.13. Gates which must be pushed open by wheelchair or mobility aid users shall have a smooth continuous surface extending from 2 inches above the floor to 27 inches above the floor.

10.3.2 Existing Facilities: Key Stations.

(1) Rapid, light and commuter rail key stations, as defined under criteria established by the Department of Transportation in subpart C of 49 CFR part 37 and existing intercity rail stations shall provide at least one accessible route from an accessible entrance to those areas necessary for use of the transportation system.

(2) The accessible route required by 10.3.2(1) shall include the features specified in 10.3.1 (1), (4)-(9), (11)-(15), and (17)-(19).

(3) Where technical infeasibility in existing stations requires the accessible route to lead from the public way to a paid area of the transit system, an accessible fare collection system, complying with 10.3.1(7), shall be provided along such accessible route.

(4) In light rail, rapid rail and commuter rail key stations, the platform or a portion thereof and the vehicle floor shall be coordinated so that the vertical difference, measured when the vehicle is at rest, is within plus or minus 1-1/2 inches under all normal passenger load conditions, and the horizontal gap, measured when the vehicle is at rest, is no greater than 3 inches for at least one door of each vehicle or car required to be accessible by 49 CFR part 37.

EXCEPTION 1: Existing vehicles retrofitted to meet the requirements of 49 CFR 37.93 (one-car-per-train rule) shall be coordinated with the platform such that, for at least one door, the vertical difference between the vehicle floor and the platform, measured when the vehicle is at rest with 50% normal passenger capacity, is within plus or minus 2 inches and the horizontal gap is no greater than 4 inches.

EXCEPTION 2: Where it is not structurally or operationally feasible to meet the horizontal gap or vertical difference requirements, mini-high platforms, car-borne or platform mounted lifts, ramps or bridge plates, or similar manually deployed devices, meeting the applicable requirements of 36 CFR part 1192, or 49 CFR part 38, shall suffice.

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[FR Doc. 92-889 Filed 1-13-92; 8:45 am]
BILLING CODE 8150-01-C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB56

Endangered and Threatened Wildlife and Plants; Final Rule to Determine the Plant Schoenocrambe Argillacea (Clay Reed-Mustard) To Be a Threatened Species, and the Plant Schoenocrambe Barnebyi (Barneby Reed-Mustard) To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) determines the plant *Schoenocrambe argillacea* (clay reed-mustard) to be a threatened species, and the plant Schoenocrambe barnebyi (Barneby reed-mustard) to be an endangered species. These two species are endemic to soils derived from specific geologic substrates in the lower elevations of the Unita Basin in northeastern Utah and in the lower elevations of the Fremont River and Muddy Creek drainages in central Utah.

The two know population clusters of *S. argillacea* are vulnerable to habitat disturbance from oil and gas development and potential oil shale development. Significant portions of the two known *S. barnebyi* populations are vulnerable to potential uranium development or trampling by park visitors. This determination that *S. argillacea* is a threatened species and *S. barnebyi* is an endangered species provides these rare plants protection under the Endangered Species Act, as amended.

EFFECTIVE DATE: February 13, 1992.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Fish and Wildlife Enhancement Office, U.S. Fish and Wildlife Service, 2078 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104.

FOR FURTHER INFORMATION CONTACT: John L. England at the above address, telephone: 801/524-4430 or FTS 588-4430.

SUPPLEMENTARY INFORMATION:

Background

Schoenocrambe argillacea was discovered by Duane Atwood in 1976 from a site in the southern portion of the Unita Basin in Uintah County, Utah. Welsh and Atwood (1977) described the species as *Thelypodiopsis argillacea*. *Schoenocrambe barnebyi* was discovered by James Harris in 1980 from a site in the southern portion of the San Rafael Swell in Emery County, Utah. Welsh and Atwood described the species as *Thelypodiopsis barnebyi* (Welsh 1981). Rollings (1982) in reevaluating the cruciferous genera of *Schoenocrambe* and *Thelypodiopsis* move *T. argillacea* and *T. barnebyi* from *Thelypodiopsis* to *Schoenocrambe* as *S. argillacea* and *S. barnebyi*

The genus *Schoenocrambe* includes five currently known species: two are abundant, wide-ranging species, one from the higher dry portions of the Great Plains and the other from the lower elevations of the Colorado Plateau; the remaining three are rare endemic species (*S. argillacea*, *S. barnebyi*, and *S. suffrutescens*) from low elevations of the northern and western portions of the Colorado Plateau in the State of Utah (Rollins 1982, Welsh and Chatterley 1985, Welsh et al. 1987). (Note: *Schoenocrambe suffretescens* (Rollins) Welsh and Chatterly was listed as an endangered species under the scientific name *Glaucocarpum suffretescens* (Rollins). The Service will begin use of the currently accepted scientific name *Schoenocrambe suffretescens* and assign to it the common name shrubby reed-mustard, in order to be in general agreement with current plant classification usage (see Welsh et al. 1987)).

Schoenocrambe argillacea is a perennial herbaceous plant, with sparsely leafed stems 15 to 30 centimeters (cm) (6 to 12 inches) tall arising from a woody root crown. The leaves are very narrow with a smooth margin, 10 to 35 millimeters (mm) (0.4 to 1.4 inches) long and, usually, less than 2 mm (0.1 inch) wide. The leaf blades are alternately arranged on the stem and, for the most part, are attached directly to the stem without a petiole. The flowers of *S. argillacea* have petals that are pale lavender to whitish with prominent purple veins and measure 8 to 11 mm (0.3 to 0.4 inch) long and 3.5 to 4.5 mm (0.14 to 0.18 inch) wide. The entire flowers are about 1 cm (0.4 inch) across in full anthesis and are displayed in a raceme of 3 to 20 flowers at the end of the plant's leafy stems.

Schoenocrambe barnebyi is a perennial herbaceous plant, with sparsely leafed stems 22 to 35 cm (9 to 15 inches) tall arising from a woody root crown. The leaves are entire with a smooth margin, 1.5 to 5 cm (0.6 to 3 inches) long and 0.5 to 2.5 cm (0.2 to 1 inch) wide. The leaf blades are alternately arranged on the stem and are attached to the stem by a petiole. The flowers of *S. barnebyi* have petals that are light purple with prominent darker purple veins and measure about 12 mm (0.4 inch) long and 2.5 mm (0.1 inch) wide. The entire flowers are about 1 cm (0.4 inch) across in full anthesis and are displayed in a raceme of, commonly, 2 to 8 flowers at the end of the plant's leafy stems.

Schoenocrambe argillacea grows on clay soils rich in gypsum, overlain with sandstone talus, derived from a mixture of shales and sandstones from the zone of contact between the Uinta and Green River geologic formation. Plant species commonly associated with *S. argillacea* include *Eriogonum corymbosum*, *Ephedra torreyana*, *Atriplex* spp., and *Artemisia* spp. Two population clusters of *S. argillacea* are known, all within a limited range about 21 kilometers (13 miles) across, from the Green River to Willow Creek in southwestern Uintah County, Utah. The species' total known population is over 5,000 plants (M.A. Franklin, Utah Natural Heritage Program, pers. comm., 1991; U.S. Fish and Wildlife Service 1991). The entire species' population is on land having Federal leases for oil and gas and/or withdrawn for mineral mining claim entry for its oil shale values. Because of this, energy development poses a threat to this species. In addtion, *Schoenocrambe argillacea s* small species population size and restricted distribution make this species inherently vulnerable to man-caused and natural environmental disturbances (U.S. Fish and Wildlife Service 1990).

Schoenocrambe barnebyi grows on red clay soils rich in selenium and gypsum, overlain with sandstone talus, derived from the Moenkopi and Chinle geologic formations. Plant species normally associated with *S. barnebyi* include *Ephedra torreyana*, *Atriplex confertifolia*, *Eriogonum corymbosum*, and *Stanleya pinnata*. Two populations of *S. barnebyi* are known, one near Sy's Butte in the southern portion of the San Rafael Sweel, and one in Capitol Reef National Park in the Sulphur Creek drainage west of Fruita. The species' entire known population is less than 1,000 plants (N. Henderson, Capitol Reef National Park, pers. comm. 1991; Welsh and Neese 1984). Assessment work in connection with mining claims for uranium poses a significant ongoing threat to one population of *S. barnebyi* located on lands managed by the Bureau of Land Management. In addition, at least one site in Capitol Reef National Park containing *S. barnebyi* is vulnerable to trampling by park visitors.

Schoenocrambe barnebyi's extremely small species population size and restricted habital make the species inherently vulnerable to man-caused and natural environmental disturbances (Welsh and Neese 1984).

In the **Federal Register** of December 15, 1980 (45 FR 82480), the Service published a notice of review of candidate plants for listing as endangered or threatened species. The 1980 notice included *S. argillacea* as a category 1 species. Category 1 species comprise those taxa for which the Service has information on the biological vulnerability and threats to support the appropriateness of proposing to list them as endangered or threatened species.

In the **Federal Register** of November 28, 1983 (48 FR 53640), the Service published a supplement to the 1980 notice of review in which *S. barnebyi* was added as a category 2 species. Category 2 comprises taxa for which the Service has information indicating the appropriateness of a proposal to list the taxa as endangered or threatened but for which more substantial data are needed on biological vulnerability and threats. In addition, *S. argillacea* was reclassified as a category 2 species in the 1983 supplemental notice.

On September 27, 1985, the Service published a notice of review (50 FR 39526) replacing the 1980 notice and its 1983 supplement. The 1985 notice of review reclassified *S. barnebyi* as a category 1 species because recent status surveys for *S. barnebyi* (Welsh and Neese 1984) provided additional status information which sufficiently demonstrated the vulnerability of this species. *Schoenocrambe argillacea* remained a category 2 species.

The Service published a notice of review on February 21, 1990 (55 FR 6184), replacing the 1985 notice. This notice maintained *S. argillacea* and *S. barnebyi* in the same categories as in the 1985 notice. Since then, more recent status surveys and reports for *S. argillacea* (Bureau of Land Management 1989a, U.S. Fish and Wildlife Service 1990) provided sufficient additional information for the Service to consider *S. argillacea* to be a category1 species. These and earlier (Welsh 1978, Shultz and Mutz 1979) status surveys and reports for *S. argillacea* and the status surveys for *S. barnebyi* (Heil 1988, Neese 1987, Kass 1990, Welsh and Neese 1984) demonstrated the appropriateness of proposing listing for these two species.

Section 4(b)(3)(B) of the Endangered Species Act (Act) amendments of 1982 requires the Secretary of the Interior to make findings on certain petitions within 1 year of their receipt. Section 2(b)(1) of the Act's amendments of 1982 further requires that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. The species in the Service's 1980 notice of review with its 1983 supplement were treated as being petitioned. On October 13, 1983, and each successive year, the Service made successive 1-year findings that the petition to list *S. argillacea* and *S. barnebyi* was warranted but precluded by other listing actions of higher priority. The Service published a proposed rule in the **Federal Register** on April 12, 1991, proposing endangered status for these two species. That proposal constituted the final 1-year finding for these species in accordance with Section 4(b)(3)(B)(ii) of the Act.

Summary of Comments and Recommendations

In the April 12, 1991, proposed rule and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal Agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices concerning this proposed action were published in The Salt Lake Tribune, the Deseret News, the Uintah Basin Standard, and the Emery County Progress during the period May 4 to May 8, 1991, which invited general public comment. During the comment period, three commenters responded—one commenter provided written comments and two commenters provided verbal comments. The commenter providing written comments supported listing *S. barnebyi* as endangered. The two commenters providing verbal comments (which were followed by more extensive written comments) questioned the listing of *S. barnebyi* and opposed the listing of *S. argillacea* at this time. Comments received are discussed below.

Comment 1: The initial results of a 1991 inventory for *S. argillacea* sponsored by the Bureau of Land Management revealed significant additional populations of the species, and the species may have a population of least twice that mentioned in the proposed rule.

Service response: Upon completion, the aforementioned inventory of *S. argillacea* estimated over 5,000 plants, as compared to the earlier estimate of 2,000 plants reported in the proposed rule, which was obtained from the Schultz and Mutz (1979) report. A significant population was discovered in the Kings Canyon drainage on the west side of Wild Horse Bench, which is a minor range extension of 1 to 3 miles to the north of previously identified suitable habitat. Nine additional stands were discovered within the known population between the Green River and Wild Horse Beach. The populations in the Willow Creek drainage remained much the same as previously known, with minor extensions of some stands. The historic stand in the southern portion of section 26, T. 11 S. R. 20 E. has apparently been extirpated. These data indicate that the known occurrences of *S. argillacea* constitute two population clusters: one near the Green River between Wild Horse Bench and the Green River, the other in the Willow Creek Drainage on the northern slopes of Big Mountain and in Broome Canyon. These additions to the *S. argillacea* species population are significant.

Through the intensive inventor conducted in 1991 has discovered more plants, it also has confirmed that *S. argillacea* is restricted to two small areas. All occurrences of *S. argillacea* are on Federal oil and gas lease areas and/or oil shale withdrawal areas.

The 1991 inventory has provided a better database upon which to base a listing decision. While the recent inventory has demonstrated that *S. argillacea* is more abundant than previously reported, it also has demonstrated that despite intensive inventory efforts, the species is still rare.

The most significant additional stands discovered in 1991 were located in an area that the author of this rule had previously identified to the biologist conducting the 1991 inventory as an area with reasonably high potential to be *S. argillacea* habitat. After the initial success obtained by searching this area, no additional significant stands of *S. argillacea* were discovered elsewhere. This strongly suggests that the criteria used by the Service to identify potential *S. argillacea* habitat are highly correlated with *S. argillacea* distribution. Based on the limited occurrence of these specific geologic substrate and topographic exposure parameters, the 1991 inventory is suspected to have located the great majority of existing *S. argillacea* sites.

Taking the above into account, in addition to the information in Comments 2 and 3, the Service has decided that it would be more appropriate to list *S. argillacea* as threatened, rather than as endangered as originally proposed. Because the species' known populations are found only on Bureau of Land Management lands with oil, gas, and oil shale potential, this rare plant will

always be vulnerable to the threat of habitat loss or disturbance due to energy development. Though candidate species status carries some weight within the Bureau of Land Management in terms of conserving the species, it cannot legally ensure that Federal actions are not likely to jeopardize *S. argillacea*.

Listing this species as threatened does not preclude future energy development in its habitat. Listing ensures that proposed energy extraction operations that may affect *S. argillacea* on Federal lands are reviewed, and where necessary, actions are implemented so as to avoid jeopardy to this rare plant.

Comment 2: The habitat of *S. argillacea* is over lower grade oil shale deposits that are considered marginal for future oil shale development. There are currently no plans for development of these oil shale reserves.

Service response: The Service takes note of the fact that habitat disturbance threats from oil shale development are not imminent and has revised the rule accordingly. However, much of the species' habitat is over lands with good potential for oil and gas development. There is increasing oil and gas activity in this area, and care should be taken to avoid harming *S. argillacea* populations.

Comment 3: The location of *S. argillacea* populations on steep slopes makes the species unlikely to be disturbed by oil and gas development activities.

Service response: The location of the species on steep slopes provides some protection from direct impacts of oil and gas development activity but does not necessarily provide protection from indirect impacts. Construction of access roads and possible disposal of construction spoils into the species' occupied areas are potential threats to some populations of this species. In fact, the Service received word that a proposed well pad development was recently visited where, unknowingly, plans had been made to dispose of construction spoils onto a site containing *S. argillacea*.

Comment 4: The range and population of *S. barnebyi* may be greater than currently known, and listing should be delayed until more surveys are completed.

Service response: Several recent studies and inventories which have surveyed known populations of *S. barnebyi* as either the sole or a principle study objective (See "Background" and "References Cited") have shown the species to be very rare and restricted in distribution, with a high degree of inherent vulnerability. In the proposed rule, the species' population was estimated to be 2,000 plants. However, information received during the comment period indicates that a more accurate estimate would be less than 1,000 plants. The scientific data available at this time indicates that it is appropriate to list this species as endangered.

Comment 5: Populations of *S. barnebyi* in Capitol Reef National Park are secure from any human-caused adverse action.

Service response: The occurrence of populations of a rare, unlisted species within a national park does not necessarily ensure complete protection of those populations from adverse impacts. The populations of *S. barnebyi* within the park are much smaller than reported in the proposed rule and at least one site is susceptible to trampling by park visitors. The National Park Service is concerned about the status of *S. barnebyi* within Capitol Reef National Park and strongly supports listing the species as endangered. Listing will focus additional attention and resources on the species to ensure its survival into the future.

Comment 6: There is no active uranium development activity in the habitat of *S. barnebyi*.

Service response: The small population of *S. barnebyi* on land managed by the Bureau of Land Management is on a current mining claim. The Mining Act of 1872 requires on-the-ground mining assessment work on all current claims. Given the extremely small size of the know species' population, such assessment work, even if of a minor nature, could result in major impacts to this population.

Comment 7: The policy of the bureau of Land Management is to conserve candidate species, such as these plants, consistent with the principles of multiple-use management. This policy protects candidate species.

Service response: The Service acknowledges the positive efforts of the Bureau of Land Management in the conservation of these and other candidate plants. However, the Bureau of Land Management's written comment acknowledges that this policy does not provide candidate species the (same) protection afforded listed species. The identification of a species as a candidate species is a temporary measure until the Service is prepared to propose the species for listing as either threatened or endangered or to remove the species from further active consideration for listing. After reviewing the best available data, the Service has decided that these species require the protection of the Act in order to avoid extinction or endangerment throughout all or a significant portion of their range, and, therefore, has listed *S. barnebyi* as endangered and *S. argillacea* as threatened.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Schoenocrambe argillacea* should be classified as threatened and *Schoenocrambe barnebyi* should be classified as endangered. Procedures found at Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *S. argillacea* (Welsh and Atwood) Rollins and *S. barnebyi* (Welsh and Atwood) Rollins are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

All known populations *S. argillacea* are on Federal lands leased for their oil and gas energy reserves. The species is vulnerable to surface disturbing activity associated with energy development within its habitat (Welsh 1978, U.S. Fish and Wildlife Service 1990). There has been an increase in oil and gas exploratory activity in the species' habitat, which could lead to development in the foreseeable future. In addition, the entire range of *S. argillacea* is underlain by oil shale, which may be mined when economic conditions favor it. Recent inventories for rare plants in the range of *S. argillacea* have demonstrated a small population and restricted range for this species. The species has an estimated population of over 5,000 individuals in two small areas about 12 km apart. One stand has apparently become extirpated since its discovery in 1979 (U.S. Fish and Wildlife Service 1991).

The primary threat to *S. barnebyi* is habitat destruction associated with potential uranium mining activity. The single hillside where the species occurs in its San Rafael Swell population has an access road bulldozed across it with mining prospects near the species' limited distribution. Portions of the species' habitat lie within six mining claims at Sy's Butte, which require annual assessment work which could further degrade the species' habitat. The

workings of one of the largest uranium mines in the San Rafael Swell are only a mile away on the same exposure of geologic strata as *S. barnebyi* (U.S. Fish and Wildlife Service 1985). The species' highly restricted distribution and very small population make the species highly vulnerable to any activity which would disturb its habitat (Welsh and Neese 1984).

Capitol Reef National Park provides some protection to the small *S. barnebyi* population within its borders, though one site is currently being impacted by visitor trampling. The species also is vulnerable to any activity, including road and recreational developments, which may occur on its national park habitat.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization for these purposes is not presently known. However, take or vandalism could have a serious impact on these species, given their small population numbers. Because of this, the Service recommends against publicizing these species' location, other than to land managers.

C. Disease or Predation

Sheep and cattle grazing may have had an impact on *S. argillacea* and *S. barnebyi* historically, but with current levels of grazing intensity and grazing management by the Bureau of Land Management, domestic livestock grazing is not expected to significantly impact these species.

D. The Inadequacy of Existing Regulatory Mechanisms

There are no Federal, State, or local laws or regulations that address these species specifically or directly provide for the protection of their habitat. The Bureau of Land Management and the National Park Service are aware of both *S. argillacea* and *S. barnebyi* and have considered them in environmental planning of their habitat areas (Bureau of Land Management 1984, Bureau of Land Management 1989b, National Park Service 1982). All plants within Capitol Reef National Park are protected by regulation from taking; this, however, has not been identified as a threat to *S. barnebyi*, provided the species' location is not publicized. *Schoenocrambe barnebyi* would still be vulnerable to other activities within Capitol Reef National Park, such as road and recreational development. Any conservation activity undertaken by Federal Agencies would be voluntary. Federal Agencies are not legally obligated to conserve *S. argillacea* and *S. barnebyi* unless these species are listed.

E. Other Natural or Manmade Factors Affecting Their Continued Existence

Most sites of *S. argillacea* contain less than 200 individuals and the species has been extirpated from one of these sites (U.S. Fish and Wildlife Service 1991). The San Rafael Swell population of *S. barnebyi* has fewer than 100 individuals and the four sites in Capitol Reef National Park have 200 or fewer plants each. Some sites may hold so few plants that they may not be demographically stable in the medium to long term. Some of the smaller site populations of both *S. argillacea* and *S. barnebyi* may be lost as a result of natural variation in population numbers in the short term. The effects of past habitat degradation on the species' ability to respond to environmental stress is not known but may be critical to the species' future existence. Only the larger sites of *S. argillacea* may have sufficient genetic variability to provide for long-term adaptation to natural changes in their environmental conditions.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by *S. argillacea* and *S. barnebyi* in determining to make this rule final. Based on this evaluation, the preferred action is to list *S. argillacea* as a threatened species and *S. barnebyi* as an endangered species. Both species are rare endemics restricted to specific areas having potential for being exploited for energy resources or subject to other disturbances. These species' rarity and their limited distribution also make them inherently vulnerable to environmental perturbations.

Schoenocrambe barnebyi is extremely rare, and known threats place it in danger of extinction throughout a significant portion of its range. Therefore, *S. barnebyi* qualifies as endangered as defined by the Act. The status of threatened does not reflect the biological vulnerability of *S. barnebyi* populations.

Schoenocrambe argillacea is not currently in danger of extinction throughout all or a significant portion of its range. However, its small population size, limited distribution, and location on Federal lands subject to oil, gas, and oil shale development make it likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Therefore, it qualifies as threatened as defined by the Act. For the reasons given below, it is not considered prudent to designate critical habitat.

Critical Habitat

Section 4(a)(3) of the Act requires, to the maximum extent prudent and determinable, that the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not presently prudent for these species at this time because the benefits of publicizing critical habitat are outweighed by added dangers. Publication of critical habitat is not in the best interest of these species. The rarity of these species and their restricted range make these plants particularly vulnerable to taking. With respect to endangered plants on Federal lands, taking is only regulated by the Act in cases of removal and reduction to possession or their malicious damge or destruction on such lands. Such provisions are difficult to enforce.

Adding these plants to the List of Endangered and Threatened Plants publicizes their rarity and thus can make them attractive to curiosity seekers or expose them to potential vandalism. Though prohibited by the Act, taking and vandalism are difficult to control on the ground. At least one of the sites containing *S. barnebyi* located in Capitol Reef National Park is vulnerable to trampling by park visitors. Because *S. argillacea* is located on steep slopes, visitation for purposes of viewing could increase slope erosion, which could be detrimental. Publication of critical habitat descriptions and maps would make it easier for various parties to locate and/or take the plants.

The principal land managers have been notified of the location of these species and are aware of the importance of protecting these species' habitat. Protection of these species' habitat will be addressed through the recovery process and the section 7 jeopardy standard. Any Federal action that would impact these plants' habitat would necessarily affect the plants themselves (being immobile, rooted organisms) and would be reviewed during section 7 consultation. The Service finds that designation of critical habitat is not presently prudent for these two plant species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in

conservation actions by Federal, State, Indian, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal Agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal Agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal Agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal Agency must enter into formal consultation with the Service.

The known populations of *S. argillacea* and *S. barnebyi* are on Federal lands under either the jurisdiction of the Bureau of Land Management or the National Park Service. The Bureau of Land Management, in addition, is responsible for the leasing of minerals under Federal jurisdiction. Both of the Federal Agencies would be responsible for ensuring that Federal land uses and actions are not likely to jeopardize the continued existence of *S. argillacea* and *S. barnebyi*.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, 17.63, 17.71, and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all endangered and threatened plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 and 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale these species in interstate or foreign commerce, or to remove and reduce to possession these species from areas under Federal jurisdiction. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62, 17.63, and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few, if any, trade permits would ever be sought or issue for *S. argillacea* and *S. barnebyi* because these species are not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, room 432, 4401 North Fairfax Drive, Arlington, Virginia 22203–3507, telephone (703) 358–2093 or FTS 921–2093.

National Environmental Policy Act

The U.S. Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Welsh, S.L., N.D. Atwood., L.C. Higgins, and S. Goodrich. 1987. A Utah flora. Great Basin Nat. Mem. 9:1–894.

Author

The primary author of this rule is John L. England, botanist, U.S. Fish and Wildlife Service, Salt Lake City, Utah (801/524–4430 or FTS 588–4430, see **ADDRESSES** above).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

PART 17—[AMENDED]

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under Brassicaceae, to the List of Endangered and Threatened Plants:

§ 17.12 **Endangered and threatened plants.**

(h) * * *

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Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	
Brassicaceae—Mustard Family:						
*	*	*	*	*	*	
Schoenocrambe argillacea	Clay reed-mustard	U.S.A. (UT)	T	457	NA	NA
Schoenocrambe barnebyi	Barneby reed-mustard	U.S.A. (UT)	E	457	NA	NA
*	*	*	*	*	*	

Dated: December 30, 1991.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 92-896 Filed 1-13-92; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 57, No. 9
Tuesday, January 14, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 208, 209, and 274a

[INS No. 1374-91; AG Order No. 1554-92]

RIN 1115-AC93

Fees for Processing Certain Asylee-Related and Refugee-Related Applications

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend parts 103, 208, and 209 of title 8, Code of Federal Regulations, to provide that the Immigration and Naturalization Service (INS) and the Executive Office for Immigration Review (EOIR) will charge fees for the processing of certain asylee-related and refugee-related applications. These charges are necessary to ensure that applicants for asylum or refugee status who receive special services and benefits that do not accrue to the public at large will bear the Government's cost of providing these special services. These charges are being proposed after taking into account the cost to the Government of providing these services, the value of the services to the recipients, the public policy served by these programs, and other pertinent facts.

This proposed rule will also amend 8 CFR 274a.13(a) to clarify where initial and renewal applications for employment authorization on behalf of asylum applicants should be filed.

DATES: Written comments must be submitted on or before February 14, 1992.

ADDRESSES: Please submit written comments in triplicate to the Record System Division, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., room 5304, Washington, DC 20536. To ensure proper and timely handling, please reference the INS No. 1347-91 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Charles S. Thomason, Systems Accountant, Financial Policy and Special Projects Section, Immigration and Naturalization Service, 425 I Street, NW., room 6321, Washington, DC 20536, telephone (202) 376-2804.

SUPPLEMENTARY INFORMATION: On an ongoing basis, the INS and EOIR review the fee structure of immigration programs so as to be in compliance with 31 U.S.C. 9701 and with Office of Management and Budget (OMB) Circular A-25. Section 9701 authorizes the Attorney General to establish a fee for services provided to individuals by INS and EOIR so that the services will be "self-sustaining to the extent possible." The amount of each fee must be fair, and based upon the direct and indirect costs to the Government of providing the service, the value of the service to the recipient, the public policy served by these programs, and other pertinent facts.

The identified costs incurred by the INS and EOIR to render special asylee-related and refugee-related services and benefits include, but are not limited to, costs associated with processing: Form I-730, Refugee/Asylee Relative Petition; Form I-485, Application for Permanent Residence: and, Form I-765, Application for Employment Authorization. At the present time, the INS and EOIR do not charge fees in connection with processing these forms. Under this rule, INS and EOIR propose to:

1. Amend 8 CFR 103.7(b)(1) to establish a fee for Form I-730, Refugee/Asylee Relative Petition;

2. Amend 8 CFR 208.7(c) to provide for the collection of a fee with the filing of an application for renewed employment authorization on Form I-765;

3. Amend 8 CFR 208.21 to provide for the collection of a fee with the filing of Form I-730; and,

4. Amend 8 CFR 209.2 to provide for the collection of a fee with the filing of Form I-485.

No fee will be charged in connections with the initial application for employment authorization on Form I-765.

These proposed charges are based upon the INS's application of the principles for user charges prescribed in 31 U.S.C. 9701 and the guidelines prescribed in OMB Circular A-25. These proposed charges also reflect a review by the INS's of its policies and practices for user charges, and a review of its costs and fees. Further details regarding the review are available upon request from INS Headquarters, or by contacting Mr. Thomason at the address listed in the **"FOR FURTHER INFORMATION CONTACT"** Section of this proposed rule.

This proposed rule will also amend 8 CFR 274a.13(a) to clarify that initial applications for employment authorization on behalf of asylum applicants should be filed with the appropriate asylum office, while renewal or extension applications should be filed with the district director.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of Executive Order 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with section 6 Executive Order 12612.

The information collection requirements contained in this rule have been forwarded to the Office of Management and Budget, under the provisions of the Paperwork Reduction Act, for review and clearance.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 209

Aliens, Immigration, Refugees.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

Accordingly, chapter I, title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS: AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2. 2. In § 103.7, paragraph (b)(1) is amended by adding, in proper numerical sequence, Form I–730 to the list of forms, to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

Form I–730. For filing application to classify a relative as a derivative asyleee/refugee—$75.00

* * * * *

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF DEPORTATION

3. The authority citation for part 208 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1158, 1226, 1252, 1282; 31 U.S.C. 9701; 8 CFR part 2.

§ 208.7 [Amended].

4. In § 208.7, paragraph (c) is amended, in the first sentence, by revising the phrase "Form I–765" to read "Form I–765, with fee,".

§ 208.21 [Amended].

5. Section 208.21 is amended:

a. In paragraph (c), by revising the phrase "Form I–730" to read "Form I–730, with fee,"; and,

b. In the first sentence of paragraph (d), by revising the phrase "form I–730" to read "Form I–730, with fee,".

PART 209—ADJUSTMENT OF STATUS OF REFUGEES AND ALIENS GRANTED ASYLUM

6. The authority citation for part 209 is revised to read as follows:

Authority: 8 CFR 1101, 1103, 1157, 1158, and 1159; 31 U.S.C. 9701.

7. In § 209.2, the first sentence of paragraph (c) is revised to read as follows:

§ 209.2 Adjustment of status of alien granted asylum.

* * * * *

(c) *Application.* An application for the benefits of section 209(b) of the Act may be filed on Form I–485 (Application for Status as Permanent Resident), with fee, with the district director having jurisdiction over the applicant's place of residence. * * *

* * * * *

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

8. The authority citation for part 274a is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

9. In § 274a.13, paragraph (a) is revised to read as follows:

§ 274a.13 Application for employment authorization.

(a) *General.* An application for employment authorization (Form I–765) by an alien under § 274a.12(a)(3)–(8) and (10)–(11), and under § 274a.12(c), including an application for renewal or extension of employment authorization under § 174.12(c)(8), of this part shall be filed in accordance with the instructions on Form I–765 with the district director having jurisdiction over the applicant's residence or the district director having jurisdiction over the port of entry at which the alien applies. The approval of such an application for employment authorization shall be within the discretion of the district director. Where economic necessity had been identified as a factor, the alien must provide information regarding his or her assets, income, and expenses in accordance with the instructions on Form I–765. An initial application for employment authorization (Form I–765) for asylum applicants under 8 CFR 274a.12(c)(8) shall be filed, without fee, with the asylum office having jurisdiction over the asylum application.

* * * * *

Dated: January 4, 1992.

William P. Barr,

Attorney General.

[FR Doc. 92–814 Filed 1–13–92; 8:45 am]

BILLING CODE 4410–10–M

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Reg. B; EC–1]

Equal Credit Opportunity; Proposed Update to Official Staff Commentary

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed official staff interpretation.

SUMMARY: The Board is publishing for comment proposed revisions to the official staff commentary to Regulation B (Equal Credit Opportunity). The commentary applies and interprets the requirements of Regulation B and is a substitute for individual staff interpretations of the regulation. The revisions clarify an issue involving the relationship between Regulation B and Regulation C (which implements the Home Mortgage Disclosure Act) with regard to data collection on loan applications received by creditors through brokers or other persons. While data collection on such applications is not required for purposes of Regulation B, it may be called for under Regulation C.

DATES: Comments must be received on or before February 14, 1992.

ADDRESSES: Comments should refer to Docket No. EC–1 and be sent to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. Comments may also be delivered to the guard station in the Eccles Building courtyard entrance on 20th Street NW. (between Constitution Avenue and C Street, NW) between 8:45 and 5:15 weekdays. All comments received at the above address will be available for inspection and copying by any member of the public in the Freedom of Information Office, room B–1122 of the Eccles Building, between 9 a.m. and 5 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: In the Division of Consumer and Community Affairs, Adrienne D. Hurt, Senior Attorney, at (202) 452–2412; for the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD), at (202) 452–3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

(1) General

The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691–1691f, makes it unlawful for creditors to discriminate in any aspect of a credit transaction on the basis of gender, marital status, race, color, religion, national origin, age, receipt of public assistance, or the exercise of rights under the Consumer Credit Protection Act. This statute is implemented by the Board's Regulation B (12 CFR part 202). The Board also has an official staff commentary (12 CFR part 202) (Supp. I)) that interprets the regulation. The commentary provides general guidance to creditors in apply the regulation to various credit transactions, and is updated periodically to address significant questions that arise. The Board requests that, if possible, comments be submitted using a standard type face with a type

size of 10 or 12 pitch in double-spaced text. This will enable the Board to more efficiently convert comments into an automated format.

(2) Proposed Revisions

Section 202.5—Rules Concerning Taking of Applications

5(b) General Rules Concerning Requests for Information

Comment 5(b)(2)–3 would be added primarily to indicate that loan brokers, correspondents, or other persons do not violate the ECOA or Regulation B if they collect information that they would otherwise be prohibited from collecting under the regulation for the purpose of providing the information to a creditor subject to the Home Mortgage Disclosure Act (HMDA), 12 U.S.C. 2801–2810.

Section 202.13—Information for Monitoring Purposes

13(b) Obtaining of Information

Comment 13(b)–4 would be revised to indicate that even though creditors need not obtain the monitoring information for purposes of § 202.13 of Regulation B, when accepting an application through an unaffiliated loan shopping service, data collection may nonetheless be required for creditors subject to HMDA.

List of Subjects in 12 CFR Part 202

Banks, Banking; Civil rights; Consumer protection; Credit; Federal Reserve System; Marital status discrimination; Minority groups; Penalties, Religious discrimination; Sex discrimination; Women.

Certain conventions have been used to highlight the proposed revisions. New language is shown inside bold-faced arrows while language that would be deleted is set off with brackets.

Pursuant to authority granted in section 703 of the Equal Credit Opportunity Act (15 U.S.C. 1691b), the Board is amending the official staff commentary to Regulation B (12 CFR part 202, Supp. I) as follows:

PART 202—[AMENDED]

1. The authority citation for Part 202 continues to read as follows:

Authority: 15 U.S.C. 1691–1691f.

Supplement I of Part 202 [Amended]

2. In Supp. I of part 202, under section 202.5(b)(2), comment 3 would be added to read as follows:

Section 202.5—Rules Concerning Taking of Applications

* * * *

5(b) *General rules concerning requests for information.*

* * * * *

Paragraph 5(b)(2))

* * * * *

►3. *Collecting information on behalf of creditors.* Loan brokers, correspondents, or other persons do not violate the ECOA or Regulation B if they collect information that they are otherwise prohibited from collecting, where the purpose of collecting the information is to provide it to a creditor that is subject to the Home Mortgage Disclosure Act, or another federal or state statute or regulation requiring data collection.◄

* * * * *

3. In Supp. I of part 202, under section 202.13(b), comment 4 would be revised to read as follows:

Section 202.13—Information for Monitoring Purposes

* * * * *

13(b) *Obtaining of information.*

* * * * *

4. *Applications through loan-shopping services.* When a creditor accepts an application through an unaffiliated loan-shopping service, it does not have to request the monitoring information [.] ►for purposes of the ECOA or Regulation B. Creditors subject to the Home Mortgage Disclosure Act should be aware, however, that data collection may be called for under Regulation C which requires creditors to report, among other things, the sex, and race or national origin of an applicant on brokered applications or applications received through a correspondent.◄

* * * * *

Board of Governors of the Federal Reserve System, January 8, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92–917 Filed 1–13–92; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Exempted Prescription Products

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This rule proposes to amend § 1308.32 of title 21 of the Code of Federal Regualtions such that those products listed in § 1308.32 containing butalbital shall not be exempt from sections 952–954 of the Controlled Substances Import and Export Act. This action is in response to a decision of the United Nations Commission on Narcotic Drugs taken at the Commission's thirty-fourth session.

DATES: Comments must be submitted on or before February 13, 1992.

ADDRESSES: Comments and objections should be submitted to the Administrator, Drug Enforcement Administration, Washington, DC 20537. Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug & Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington DC 20537. Telephone (202) 307–7183.

SUPPLEMENTARY INFORMATION: 21 U.S.C 956(b) of the Controlled Substances Import and Export Act authorizes the Attorney General to except any compound, mixture, or preparation containing any depressant or stimulant substances listed in paragraph (a) or (b) of Schedule III or Schedule IV or V from the application of all or any part of this subchapter. This is applicable if (1) the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant or stimulant effect on the central nervous system; and (2) such ingredients are included, therein, in such combination, quantity, proportion, or concentration as to viviate the potential for abuse of the substances which do have a depressant or stimulant effect on the central nervous system.

The United States is a Party to the United Nations Convention on Psychotropic Substances, 1971. Congress intended that the United States fulfill the requirements of this treaty and made provisions under section 21 U.S.C. 801(a) of the CSA to incorporate the Convention's provisions within the CSA.

Under the provisions of the 1971 Convention, Article 3 provides that if certain conditions are met, a Party may exempt preparations containing psychotropic substances from certain measures of control provided for in the Convention, except for specific obligatory requirements. A Party must then notify the Secretary-General of the identity of these exempt products. The Secretary-General, in turn, notifies all pertinent entities.

Article 3, paragraph 4 of the Convention, stipulates that after notification of the exemption of a product or products by a Party, another Party or the World Health Organization (WHO) may decide to recommend to the Secretary-General the termination in whole or in part of the exemption of this Party. The Secretary-General, in turn, transmits such notification to all Parties and the Commission on Narcotic Drugs (CND).

The CND was established by the Economic and Social Council of the United Nations. It is responsible for the implemention and monitoring of treaty functions. Under Article 3, paragraph 4 of the Convention, the Commission, upon review of all pertinent documentation, may decide to terminate the exemption of a preparation from any or all control measures.

Any decision of the Commission taken pursuant to Article 3, paragraph 4, shall be communicated by the Secretary-General to all Parties. All Parties shall then take measures to terminate the exemption from the control measures in question.

On May 16, 1989, the United States notified the United Nations of the exemption of 55 products containing butalbital. On October 22, 1990, the WHO notified the Secretary-General of the recommendation to terminate the exemption of these preparations containing butalbital so that the requirements of Article 12, paragraph 2, import/export documentation of the 1971 Convention, should apply.

On April 29, 1991, the 34th Commission on Narcotic Drugs by decision 4 (XXXIV) decided to terminate the exemption by the Government of the United States of America of the preparations containing butalbital as found in § 1308.32 of title 21 of the Code of Federal Regulations from certain control measures provided in the 1971 Convention on Psychotropic Substances so that the requirements of Article 12, paragraph 2, import/export documentation of the Convention, should apply to these preparations.

To comply with the decision of the Commission, the DEA proposes to amend Section 1308.32 of the Code of Federal Regulations so that those exempt prescription products listed in § 1308.32 containing butalbital shall be subject to the import/export requirements of Sections 952–954 of the Controlled Substances Import and Export Act.

The Administrator of the DEA hereby certifies that this proposed rule will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 et. seq. This rule is not a major rule for purposes of Executive Order (E.O.) 12291 of February 17, 1981.

Pursuant to sections 3(c)(3) and 3(e)(2)(C) of E.O. 12291, this proposed rule has been submitted for review to the Office of Management and Budget and approval from that office has been requested pursuant to the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. et. seq.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in Title 21 CFR Part 1308

Administrative practice and procedure, DEA, Drug traffic control, Narcotics, and Prescription drugs.

Under the authority vested in the Attorney General by section 202(d) of the Act (21 U.S.C. 811 (g)(3)(A)) and delegated to the Administrator of the DEA by regulations of the Department of Justice (28 CFR part 0.100) and redelegated to the Deputy Assistant Administrator, Office of Diversion Control of the DEA, pursuant to 47 FR 43370, the Deputy Assistant Administrator of the Office of Diversion Control hereby proposes to amend title 21 CFR part 1308 by revising the introductory text of § 1308.32 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 801a, 811, 812, 956(b), 871(b).

2. Section 1308.32 is proposed to be amended by revising the introductory text to read as follows:

1308.32 Exempted prescription products.

The following compounds, mixtures, or preparations which contain a non-narcotic controlled substance listed in § 1308.12(e) or in § 1308.13(b) or (c) or in § 1308.14 or in § 1308.15, listed in the Table of Exempted Prescription Products, have been exempted by the Administrator from the application of sections 302 through 305, 307 through 309, 1002 through 1004 of the Act (21 U.S.C. 822–825, 827–829, and 952–954) and §§ 1301.24, 1301.31, 1301.32, and 1301.71 through 1301.76 of this chapter for administrative purposes only; except that those products containing butalbital shall not be exempt from the requirements of 21 U.S.C. 952–954 concerning importation, exportation, transshipment and in-transit shipment of controlled substances. Any deviation from the quantitative composition of any of the listed drugs shall require a petition for exemption in order for the product to be exempted.

* * * * *

Dated: January 3, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92–841 Filed 1–13–92; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1240

[Docket No. 91N–0272]

Control of Communicable Diseases; Definition of Milk and Milk Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to make a technical amendment to the regulations established for the control of communicable diseases by defining "milk" and "milk products" in § 1240.3 (21 CFR 1240.3) and by revising § 1240.61 (21 CFR 1240.61) to clarify that this regulation applies to the dairy ingredients of certain dairy products such as nonfat dry milk, cottage cheese, or butter, and that it was never intended to require that these finished products be subjected to the pasteurization process after their manufacture. The purpose of this proposed technical amendment is to make explicit that which was implicit in the original rule.

DATES: Written comments by March 16, 1992. The agency proposes that any final rule that may issue based upon this proposal shall become effective on the date of publication of the final rule in the **Federal Register.**

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Johnnie G. Nichols, Center for Food Safety and Applied Nutrition (HFF–346), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0175.

SUPPLEMENTARY INFORMATION: FDA is proposing to amend the regulations that it promulgated under the Public Health Service Act (42 U.S.C. 264) for the control of communicable diseases by including definitions for "milk" and "milk products" among the general definitions in § 1240.3 and by clarifying

when dairy ingredients must be pasteurized in accordance with § 1240.61. The purpose of these proposed technical amendments is, first, to set out those dairy products that are covered under § 1240.61. Therefore, in § 1240.3, FDA is defining "milk" and "milk products." FDA is proposing to adopt as its definition for "milk" the standard of identity for this food in 21 CFR 131.110. FDA is proposing to use the standard as its definition because the agency believes that it should use consistent definitions in its regulations. The definition for "milk products" includes all foods other than "milk" normally regulated by State and Federal regulatory agencies as dairy products under Federal or State law or under State model ordinances such as the Grade "A" Pasteurized Milk Ordinance.

Secondly, FDA is proposing to amend § 1240.61 to clarify that the requirement for pasteurization applies to the dairy ingredients of certain milk products, such as nonfat dry milk, cottage cheese, or butter, and not to the finished products. It was never FDA's intention to require that these finished products be subjected to the pasteurization process subsequent to their manufacture. Pasteurization of the dairy ingredients eliminates the pathogens of concern and accomplishes the purposes for which FDA adopted this regulation.

I. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8)(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

II. Economic Impact

In accordance with the Regulatory Flexibility Act (Pub. L. 96–354) and Executive Order 12291, the agency has analyzed the economic effects of this proposal. Because this technical amendment causes no substantive change, it will have no economic impact. Further, in accordance with Executive Order 12291, FDA has detemined that the economic effects of the final rule, if promulgated, will not constitute a major rule as defined by that Order.

III. Comments

Interested persons may, on or before March 16, 1992, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 1240

Communicable diseases, Public health, Travel restrictions, Water supply.

Therefore, under the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 1240 be amended as follows:

PART 1240—CONTROL OF COMMUNICABLE DISEASES

1. The authority citation for 21 CFR part 1240 continues to read as follows:

Authority: Secs. 215, 311, 361, 368 of the Public Health Service Act (42 U.S.C. 216, 243, 264, 271).

2. Section 1240.3 is amended by redesignating paragraphs (i), (j), (k), (l), (m), (n), (o), and (p) as paragraphs (k), (l), (m), (n), (o), (p), (q), and (r) respectively, and by adding new paragraphs (i) and (j) to read as follows:

§ 1240.3 General definitions.

* * * * *

(i) *Milk.* Milk is the product defined in § 131.110 of this chapter.

(j) *Milk products.* Food products made exclusively or principally from the lacteal secretion obtained from one or more healthy milk-producing animals, e.g., cows, goats, sheep, and water buffalo, including, but not limited to, the following: lowfat milk, skim milk, cream, half and half, dry milk, nonfat dry milk, dry cream, condensed or concentrated milk products, cultured or acidified milk or milk products, kefir, eggnog, yogurt, butter, cheese (where not specifically exempted by regulation), whey, condensed or dry whey or whey products, ice cream, ice milk, other frozen dairy desserts and products obtained by modifying the chemical or physical characteristics of milk, cream, or whey by using enzymes, solvents, heat, pressure, cooling, vacuum, genetic engineering, fractionation, or other similar processes, and any such product made by the addition or subtraction of milkfat or the addition of safe and suitable optional ingredients for the protein, vitamin, or mineral fortification of the product.

* * * * *

3. Section 1240.61 is amended by revising paragraph (a) to read as follows:

§ 1240.61 Mandatory pasteurization for all milk and milk products in final package form intended for direct human consumption.

(a) No person shall cause to be delivered into interstate commerce or shall sell, otherwise distribute, or hold for sale or other distribution after shipment in interstate commerce any milk or milk product in final package form for direct human consumption unless the product has been pasteurized or is made from dairy ingredients (milk or milk products) that have all been pasteurized, except where alternative procedures to pasteurization are provided for by regulation, such as in part 133 of this chapter for curing of certain cheese varieties.

* * * * *

Dated: November 22, 1991.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–894 Filed 1–13–92; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[CO–111–90]

RIN 1545–AQ05

Revision of Section 338 Consistency Rules; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of public hearing on proposed regulations that replace the stock and asset consistency rules of §§ 1.338–4T and 1.338–5T of the temporary Income Tax Regulations.

DATES: The public hearing will be held on Thursday, March 26, 1992, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Thursday, March 12, 1992.

ADDRESSES: The public hearing will be held in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (CO–111–90), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–377–9236 or (202) 566–3935 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 304 and 338 of the Internal Revenue Code. The proposed regulations appear elsewhere in this issue of the **Federal Register.**

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Thursday, March 12, 1992, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Service Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaision Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92–717 Filed 1–13–92; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 1

[CO–111–90]

RIN 1545–AQ05

Revision of Section 338 Consistency Rules

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that replace the stock and asset consistency rules of §§ 1.338–4T and 1.338–5T of the temporary Income Tax Regulations. The proposed regulations substantially revise and simplify the stock and asset consistency rules. The proposed regulations also restate, simplify, and substantially shorten most of the other regulations under section 338.

DATES: Written comments and requests to appear, and outlines of oral comments to be presented, at a public hearing scheduled for March 26,1992, at 10 a.m. must be received by March 12, 1992. See the notice of hearing published elsewhere in this issue of the **Federal Register.**

ADDRESSES: Send comments, requests to appear at the public hearing, and outlines of oral comments for the public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention CC:CORP:T:R (CO–111–90), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Michael B. Fulton at telephone (202) 566–2454 (not a toll-free number) for domestic issues and Kenneth D. Allison at telephone (202) 566–6442 (not a toll-free number) for international issues.

SUPPLEMENTARY INFORMATION:

A. Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504 (h)). Comments on the collections of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, T:FP, Washington, DC 20224.

The collections of information in these proposed regulations are in §§ 1.338–1(d), (e)(3), (f)(4), (e)(5), (f)(1), and (g)(4), 1.338–3(d)(4), 1.338(b)–1(e)(3), and 1.338(h)(10)–1(d). This information is required by the Internal Revenue Service to assure compliance with the regulations under section 338. The respondents will be corporations making elections under section 338.

The following estimates are an approximation of the average time expected to be necessary for the collections of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or lesser time, depending on their particular circumstances. The following estimates do not include the time to complete and file Form 8023 (Statement of section 338 election).

Estimate total annual reporting burden: 25 hours.

Estimated burden per respondent varies from 0.25 hours to 0.75 hours, depending on individual circumstances, with an estimated average of 0.56 hours.

Estimated number of respondents: 45.

Estimated frequency of responses: One.

B. Background

This document contains proposed regulations that replace the asset and stock consistency rules of §§ 1.338–4T and 1.338–5T of the temporary regulations. The proposed regulations also revise the rules regarding the international aspects of section 338, which are primarily in § 1.338–5T of the temporary regulations. Finally, the proposed regulations restate the remainder of the temporary regulations under section 338, except that only minor conforming changes are made to §§ 1.338 (b)–2T and 1.338 (b)–3T.

C. The consistency rules

1. *The Current Consistency Rules*

The consistency rules of sections 338 (e) and (f), as implemented by the current temporary regulations, apply whenever a purchasing corporation ("P") makes a qualified stock purchase ("QSP") of a target corporation ("T") from a selling group ("S group"). The current consistency rules prevent P from selectively acquiring a stepped-up basis in particular T assets and preserving T's corporate attributes (including a carryover basis in other T assets) by acquiring T's stock. These rules apply broadly to transactions involving P or any member of P's affiliated group and T or any member of T's affiliated group ("T affiliates").

Under the asset consistency rules of § 1.338–4T (f) of the temporary regulations, if P does not make a section 338 election for T and, during T's consistency period, any member of the P group acquires an asset of T or a T affiliate (a "tainted asset"), the District Director generally deem P to have made a section 338 election for T. If the District Director imposes a deemed election for T, the P group is, in effect, treated as having acquired all of T's assets and the tainted asset in a taxable asset acquisition.

If a deemed election is not made, the P group is treated as having made an "affirmative action carryover election." Under an affirmative action carryover election, the P group's basis in the tainted asset equals the S group's basis in the asset (a carryover basis). In such a case, a mitigation rule applies to so-

called "intercompany consolidated asset acquitisions."

P may avoid a deemed election for T by making a "protective carryover basis election" and, as under an affirmative action carryover election, taking a carryover basis in the tainted asset. If P makes a protective carryover basis election, a second mitigation rule applies to so-called "unincluded company asset acquisitions." Finally, if P makes an "offset prohibition election" in connection with the protective carryover basis election, a third mitigation rule applies to so-called "intercompany non-consolidated asset acquisitions" and a fourth mitigation rule applies to intercompany consolidated asset acquisitions.

The stock consistency rules of § 1.338–4T(e), require the P group to treat consistently the QSP of T and any QSP of a T affilitate made during T's consistency period. If P makes a section 338 election for T, the P group is deemed to make a section 338 election for any T affiliate purchased during T's consistency period and after T's acquisition date. Conversely, if P does not make (or is not deemed to make) a section 338 election for T, the P group cannot make a section 338 election for any T affiliate purchased during T's consistency period.

Under § 1.338–4T(g), the Commissioner may extend T's consistency period (before or after T's acquisition date) in certain cases. The 12-month acquisition period may also be extended by the Commissioner in certain cases. The Commissioner is also granted discretion to apply the consistency rules to certain "indirect" acquisitions of stock or assets.

A number of special consistency rules are provided under § 1.338–5T for foreign corporations ("FTs"). In particular, these rules permit P to make a "regular exclusion election" for all "excludible foreign target affiliates." Under a regular exclusion election, if P makes a section 338 election for T, the stock consistency rules do not apply to deem a section 338 election for FT. A number of special rules apply if a regular exclusion election is made. A regular exclusion election may not be made in a number of situations and may be overridden by the occurrence of any one of several "invalidation events."

2. *The Proposed Consistency Rules*

a. In General

The proposed regulations adopt a narrower set of consistency rules than those contained in the temporary regulations. Under the proposed regulations, the consistency rules generally apply only if T is a subsidiary in a consolidated group. The consistency rules also apply in certain limited cases where T pays dividends eligible for a 100 percent dividends received deduction.

The proposed regulations also simplify the consistency and mitigation rules. For example, the proposed regulations eliminate the District Director's and Commissioner's discretion in applying the rules. They also eliminate the affirmative action carryover, protective carryover, offset prohibition, and regular exclusion elections.

Unlike the temporary regulations, the proposed regulations allow P to make an election under section 338 for T without being deemed to have made a section 338 election for any T affiliate.

b. Asset Consistency

(i) *In general.* The proposed regulations apply the consistency rules in the context of consolidated groups to prevent acquisitions from being structured to take advantage of the investment adjustment rules. If the consistency rules did not apply in such a case, P could acquire assets from T with a stepped-up basis in the assets, and then acquire the T stock at no additional tax cost to the S group.

Example. S and T file a consolidated return. S has a $100x basis in the T stock, which has a fair market value of $200x. On January 1, 1993, T sells an asset to P and recognizes $100x of gain. Under § 1.1502–32, S's basis in the T stock is increased from $100x to $200x. On March 1, 1993, S sells the T stock to P for $200x and recognizes no gain or loss.

The consistency rules of the proposed regulations apply to the transaction because T's gain on the asset sale is reflected under § 1.1502–32 in S's basis in the T stock. However, under the proposed regulations, the District Director no longer has the discretion to impose a deemed section 338 election for T. Instead, under proposed § 1.338–4(d), P takes a carryover basis in any asset acquired from T. (This is referred to as the carryover basis rule.) Thus, P is no longer forced to make protective carryover basis elections in connection with every stock acquisition in order to assure the tax treatment it anticipated.

(ii) *Direct acquisitions.* The carryover basis rule generally applies to direct acquisitions of assets from T by P during T's consistency period. A direct acquisition is one in which the asset is owned by P both immediately after the asset is sold by T and on T's acquisition date.

The carryover basis rule also applies to assets acquired directly from lower-tier T affiliates or certain conduits if gain from the sale is reflected under § 1.1502–32 in the basis of the T stock. In addition, the carryover basis rules applies to assets acquired by an affiliate of P, rather than by P.

(iii) *Exceptions and mitigation rule.* The carryover basis rule does not apply if a section 338 election is made for T (and any lower-tier T affiliate the basis of whose stock reflects gain from the asset disposition). It also does not apply to certain assets if the aggregate amount realized by T (and lower-tier T affiliates or conduits) for assets otherwise subject to the carryover basis rule does not exceed $250,000.

Exceptions to the carryover basis rule are also provided for (1) any asset sold in the ordinary course of business, (2) any asset the basis of which to the P group is determined solely by reference to its basis to T or the lower-tier T affiliate, (3) any asset the basis of which immediately after the acquisition does not exceed its basis to T (or the lower-tier T affiliate or conduit), and (4) any debt or equity instrument issued by an S group member. Finally, the proposed regulations provide the Internal Revenue Service authority to identify additional exceptions.

A single mitigation rule is also provided under the proposed regulations. Under this rule, if P transfers the asset to a domestic corporation in a transaction to which section 351 applies or as a contribution to capital and no gain is recognized, P's basis in the transferee corporation's stock is increased to reflect P's cost for the asset. The transferee corporation's basis in the asset, however, is still a carryover basis.

(iv) *Indirect acquisitions.* If an arrangement exists, the consistency rules also apply to certain cases in which P indirectly acquires an asset from T. Generally, in an indirect acquisition, the ownership requirements for a direct acquisition are not satisfied but the asset is owned during the portion of the consistency period following T's acquisition date by T or a corporation that is affiliated with T at the time it owns the asset. For example, the rule applies, if, pursuant to an arrangement, T sells an asset to an unrelated person who then sells the asset to P. An indirect acquisition also includes certain cases in which P acquires the T stock indirectly from the S group.

In the case of an indirect acquisition, the carryover basis rule is modified so that P's basis in the asset is reduced to reflect any basis reductions occurring after the asset is disposed of by T (or

the lower-tier T affiliate) and before it is acquired by the P group. The other rules for direct acquisitions listed above also generally apply to indirect acquisitions.

Under the proposed regulations, the existence of an arrangement is determined under all the facts and circumstances, including the participation of certain related parties.

(v) *Affiliated groups* The consistency rules also apply in certain cases where dividends are paid to a corporation that is not a member of the same consolidated group as the distributing corporation. Generally, the consistency rules apply where a 100 percent dividends received deduction is used in conjunction with asset dispositions to achieve a result similar to that available under the investment adjustment rules.

Example. S and T are affiliates that do not file a consolidated return. S has a $100x basis in the T stock, which has a fair market value of $200x. On January 1, 1993, T sells an asset to P and recognizes $100x of gain. On February 1, 1993, T pays S a $100x dividend. On March 1, 1993, S sells the T stock to P for $100x and recognizes no gain or loss.

The consistency rules apply not only where T is a subsidiary in an affiliated group that does not file a consolidated return, but also where T is not eligible to join in the consolidated return filed by members of its affiliated group (*e.g.* an insurance company). In addition, the rules apply where a lower-tier T affiliate that is not a member of the T consolidated group pays dividends to T.

The consistency rules apply only if the dividends paid during T's consistency period exceed a threshold amount. For this purpose, only dividends eligible for a 100 percent dividends received deduction are taken into account. The threshold amount is the greater of (i) $250,000 or (ii) 125 percent of the yearly average amount of dividends paid during the three calendar years immediately preceding the year in which T's consistency period begins (or such shorter period as the corporation was in existence).

(vi) *Controlled foreign corporations.* The consistency rules of the proposed regulations apply in certain cases involving T affiliates that are controlled foreign corporations ("CFCs") where T is a domestic corporation.

First, the consistency rules apply to an asset disposed of by a T affiliate that is a CFC if the gain from the disposition of the asset is subpart F income that results in an inclusion, under section 951(a)(1)(A), in the gross income of a member of the S consolidated group. In addition, the basis in the stock of the T affiliate is not increased under section 961(a) by the amount of the inclusion that is attributable to the gain from the disposition of the asset. These principles also apply to an asset disposition that results in an inclusion under section 1293.

Second, the consistency rules apply to stock in a T affiliate acquired by P from T if the T affiliate is a CFC. After applying the general carryover basis rule to the stock of the T affiliate, the stock's basis is increased by the amount treated as a dividend under section 1248 on the disposition of the stock. Because the stock has a carryover basis, it is not considered purchased for purposes of section 338(h)(3); thus, a section 338 election may not be made for the T affiliate.

Finally, in the case of a T affiliate that is a CFC, the special rule for affiliated groups applies by reference to any dividend, amount treated as a dividend under section 1248, or amount included in income under section 951(a)(1)(B) (rather than dividends eligible for a 100 percent dividends received deduction). The basis of the stock of the T affiliate is reduced by the sum of the amounts that are described in the previous sentence solely by reason of the disposition of the asset.

c. Stock Consistency

In the proposed regulations, the stock consistency rules apply to prevent avoidance of the asset consistency rules. Thus, following the general treatment of a section 338(h)(10) election, a sale of a corporation's stock is treated as a sale of the corporation's assets if a section 338(h)(10) election is made. Because gain from this asset sale may be reflected in the basis of the stock of a higher-tier T, the carryover basis rule may apply to the assets.

d. Anti-Avoidance Rules

The proposed regulations contain several anti-avoidance rules designed to prevent circumvention of the consistency rules. These rules apply solely for purposes of the consistency rules. For example, although these rules may treat P as making a QSP of T for purposes of the consistency rules, this treatment does not apply for purposes of the other rules under section 338 (*e.g.*, P may not make an election under section 338 for T).

Under the proposed regulations, the consistency period is extended in certain cases where P (or a related person) has an arrangement to acquire T stock or assets. For purposes of applying the consistency rules, the proposed regulations also treat P as making a QSP of T where, pursuant to an arrangement, P, over a period of more than 12 months, acquires by purchase T stock meeting the requirements of section 1504(a)(2).

In addition, the proposed regulations prevent avoidance of the consistency rules through the use of conduits to acquire or dispose of assets, including stock of T or an S group member. For example, if an asset is sold by a partnership that is a conduit as to T, gain from the disposition is reflected in the basis of the T stock. Moreover, if the asset is acquired by a partnership that is a conduit as to P, P is treated as owning the asset for purposes of determining whether the transaction is a direct or indirect acquisition (and the partnership may be required to take a carryover basis in the entire asset). Finally, if P purchases an interest in a conduit, P is treated as having purchased any stock owned by the conduit on that date and attributed to P with respect to the interest in the conduit that was purchased. P is also treated as purchasing any other stock attributed to P from the conduit on the day the conduit purchased the stock (provided the conduit purchased the stock not more than two years before the stock is first attributed to P).

In general, a person is a conduit as to a corporation that would be treated under section 318(a)(2) (A) and (B) as owning any stock owned by the conduit. However, a person is not a conduit unless the corporation (and its affiliates) would be treated as owning at least 50 percent of any stock owned by the person. Thus, a partnership or trust, but not a corporation, may be a conduit. Although a corporation may not be a conduit, the rules generally treat affiliates as a single person and a corporation may be treated as an affiliate even where its stock is owned through one or more conduits.

The proposed regulations also contain successor rules for both persons and assets.

D. International Aspects

1. In General

The proposed regulations in § 1.338–(g) revise the filing and notice requirements of § 1.338–1T(k). In addition, the proposed regulations, in § 1.338–5, revise and simplify the rules of § 1.338–5T concerning the effect of a section 338 election on certain domestic and foreign corporations and the shareholders of such corporations.

Special asset and stock consistency rules with respect to controlled foreign corporations are now found in § 1.338–4(h) of the proposed regulations. The foreign aspects of the regulations found in § 1.338–6T(d) remain unchanged in §§ 1.338–3(c) (3)–(6) and (8).

2. Filing and Notice Requirements

a. Delay of Election if No U.S. Tax Consequences

Section 1.338–1T(k)(2) of the current temporary regulations allows a postponement of the section 338 election where both P and T, as well as their respective affiliated groups, are foreign corporations, but not controlled foreign corporations ("CFCs"), foreign investment companies or foreign personal holding companies, and are not required to file U.S. income tax returns. The postponement continues until a member of the affiliated group becomes one of the specified foreign entities or is required to file a U.S. income tax return. Proposed § 1.338–1(g)(1)(i) provides that the postponement may not exceed three years after the acquisition date, and proposed § 1.338–1(g)(1)(v)(B) adds passive foreign investment companies to the list of specified entities.

b. Notice by Purchaser to U.S. Persons Affected by Election for FT

The temporary regulations, in § 1.338–1T(k)(7), require that certain U.S. persons that own or sell stock of FT be given notice by P that a section 338 election has been made for FT. The Service has determined that the notice requirement is too broad and applies to U.S. persons that are not affected by the deemed sale of assets for U.S. tax purposes. The proposed regulations, in § 1.338–1(g)(4), limit the notice requirements to U.S. persons who could be affected by a section 338 election for FT, but broaden the notice requirement to include affected shareholders of a passive foreign investment company or a foreign personal holding company.

Section § 1.338–1(g)(4)(v) of the proposed regulations adds a good faith exception to the general rule, at the discretion of the Commissioner, in order to alleviate P's difficulty in identifying and proving notice to covered U.S. persons.

3. Application of Section 338 to FTs

a. Elective Exclusion of Foreign Corporations Eliminated

The proposed regulations retain the general rule that a foreign corporation is not excluded from T affiliate status (see § 1.338–1(c)(14)). However, the regular exclusion election, which allowed P to elect to exclude foreign T affiliates from the operation of the stock consistency rules, has been deleted because it is no longer necessary under the new consistency rules.

b. Exceptions to Asset Consistency

The current temporary regulations in § 1.338–5T(e)(1) provide that an acquisition of property is not subject to the asset consistency rules if solely by reason of the transferor's recognition of gain under section 367(a), the transferee's basis exceeds the transferor's basis in the asset immediately before the exchange. Because a section 367(a) transfer may result in a selective basis step-up in assets, the proposed regulations eliminate the exception.

The exception from the consistency rules for the acquisition of foreign currency in § 1.338–5T(e)(2) is retained in the proposed regulations under the ordinary course of trade or business exception in § 1.338–4(d)(2)(i).

4. Operation of Provisions of Subtitle A if Section 338 Election Made for FT

a. In General

The provisions of §§ 1.338–5T(g) (1)–(4) are modified by the proposed regulations in § 1.338–5(b) to simplify the rules and reflect amendments to the Code made by the Tax Reform Act of 1986.

b. Staggered Stock Sale Rule

The temporary regulations provide, in §§ 1.338–5T(g) (2)(i) and (4), a special staggered stock sale rule for sales of blocks of CFC stock to P during the 12-month acquisition period but prior to the CFC's acquisition date. The staggered stock sale rule attributes to the seller the same share of the deemed sale earnings and profits that would have been attributed to the seller had the block of CFC stock been sold on the acquisition date (*i.e.*, the last day of the CFC's taxable year).

The proposed regulations retain the position that a U.S. seller of CFC stock should be affected by the deemed sale gain, but only with respect to blocks of stock sold on the acquisition date or within the same taxable year as the acquisition date, and only in proportion to the number of days during that year that the stock was actually held by the seller.

The proposed regulations eliminate the rule found in § 1.338–5T(g)(2)(iv) that preserves CFC status for purposes of the deemed sale of assets, if sales of CFC stock included in a QSP prior to the acquisition date cause the CFC not to be a CFC on the acquisition date.

These changes simplify the regulations and allow the provisions of subtitle A to operate without modification.

c. Subpart F and Other Consequences of the Deemed Sale

Section 1.338–5(b)(1) of the proposed regulations provides that all foreign provisions operate with respect to the deemed sale of assets as though an actual sale of the assets had occurred. Section 1.338–5(b)(2) provides that a person selling stock on the acquisition date is treated as owning stock for the entire acquisition date and takes into account, for example, the subpart F income (including deemed sale subpart F income) with respect to that stock for the taxable year ending on the acquisition date.

d. Carryover Stock Rules Modified

Sections 1.338–5T (g)(2)(iii) and (g)(6) of the temporary regulations provide that the earnings and profits and associated foreign taxes of T that is a CFC attributable to stock not purchased in the qualified stock purchase are carried over to new FT (which may or may not be a CFC). Section 1.338–5(b)(3) of the proposed regulations retains the carryover rules and adds sections 951, 956 and 960 to the list of provisions for which the CFC's earnings and profits carry over to the new FT. Carryover of earnings and profits for foreign tax credit purposes is limited by the operation of section 338(h)(16). Section 1.338–5(b)(3)(iv) states that if the non-selling shareholder is a CFC, earnings and profits still carry over to the new FT even though section 1248 does not apply to the sale of a CFC by another CFC. Section 1.338–5(b)(3)(v) adds a post-acquisition date distribution ordering rule between carryover earnings and profits and post-acquisition earnings, to coordinate the carryover earnings with the pooling rules under section 902. Comments are solicited on whether there are simpler methods for addressing the concerns that underlie the carryover rules.

e. Reference to Section 1246

The reference to section 1246 in § 1.338–5T(g)(7) is eliminated because it is covered by the reference to subtitle A in § 1.338–5(b)(1).

f. Effectively Connected Income Provision

Section 1.338–5T(h) of the temporary regulations treats gain on the deemed sale of certain assets as effectively connected if more than 50 percent of the income from the asset is effectively connected. A similar rule is applied for sourcing purposes. These rules are eliminated because of Congress' revision in 1986 of the sourcing rules and

the rules for taxing dispositions of effectively connected assets.

5. Allocation of Foreign Income Taxes

The temporary regulations are silent on how to allocate foreign taxes paid by T or a T affiliate between old T and new T for purposes of computing the foreign tax credit.

The proposed regulations, in § 1.338–5(d), recognize that a portion of those foreign taxes are paid with respect to income earned by T before T's acquisition date. The foreign taxes are allocated between old T and new T under the allocation method provided in § 1.1502–76(b)(4).

6. Effect of Section 338 Election on Section 936 Corporations

Example 5 of § 1.338–5(f) of the proposed regulations states that the deemed sale under section 338 is treated as an actual sale for purposes of determining the credit under section 936. Section 338(h)(16) does not change the source of the deemed sale income for purposes of this credit. In addition, new T is considered a new corporation for purposes of the fresh start provision of section 936(a)(2)(A).

7. Comments Requested Concerning Section 338(h)(16)

Section 338(h)(16) states that section 338 does not apply for purposes of determining the source and character of the deemed sale earnings under sections 901–908. The primary abuse that section 338(h)(16) prevents is the increase of general limitation foreign source income for purposes of sourcing and the foreign tax credit rules through the deemed sale of foreign assets, when the only actual sale is of the stock of a domestic or foreign corporation, which ordinarily generates passive foreign or U.S. sourced income. Because no foreign taxes are paid on the deemed sale of the foreign assets, the general limitation deemed sale earnings and profits can be used to "soak up" excess foreign taxes in the same basket.

The Service is seeking comments on the proper application of section 338(h)(16), including its application where the deemed sale of assets results in subpart F income under section 952.

E. Other Changes to the Regulations

The proposed regulations restate §§ 1.338–1T through –6T, 1.338(b)–1T, and 1.338(h)(10)–1T. In restating the temporary regulations, numerous editorial changes have been made to simplify and shorten the regulations. The requirements for making an election under section 338 have been removed from the regulations and will be contained in a revised Form 8023. The regulations have also been reorganized to appear in a more logical order and to place related rules together. For example, the rules in § 1.338–4T(c)(5) regarding the application of the control test of section 304 have been moved to § 1.304–5 of the proposed regulations. Question and answer format is no longer used. Finally, transition rules that no longer apply have been deleted.

Several substantive changes have been made in the proposed regulations. For example, the proposed regulations reflect the repeal of old sections 336 and 337. The proposed regulations also (1) provide that T does not recognize gain or loss on the deemed sale of stock of a T affiliate for which a section 338 election is made if T and the T affiliate file a "combined return," (2) incorporate the holdings of Rev. Rul. 90–95, 1990–2 C.B. 67 (relating to whether a QSP of T has been made), (3) provide that the section 338 election for T is invalidated if the section 338(h)(10) election for T is invalid, and (4) incorporate Announcement 86–107, 1986–44 I.R.B. 32 (relating to mandatory use of the MADSP formula when a section 338(h)(10) election is made). Finally, the proposed regulations make clear that if a section 338(h)(10) election is made, new T is liable under § 1.1502–6 for tax liabilities of the selling consolidated group.

F. Effective Dates

The proposed regulations under section 338 are generally proposed to be effective for Ts with acquisition dates on or after the date final regulations are filed with the Federal Register. Section 1.338(h)(10)–1(f) (relating to mandatory use of the MADSP formula) is generally proposed to be effective for targets with acquisition dates on or after November 10, 1986. Proposed § 1.304–5 is proposed to be effective the date final regulations are filed with the Federal Register. The existing temporary regulations remain in effect until the proposed regulations become effective.

G. Comments

The Internal Revenue Service solicits comments on the substantive changes made to the regulations and on any other ways to simplify the regulations. The Service also solicits comments on other changes that should be made to the regulations under section 338, for example to MADSP, the section 338(b) allocation rules, or the rules regarding contingent liabilities. Finally, the Service solicits comments on transition issues raised by the effective date of the proposed regulations.

H. Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact of the rules on small business.

I. Comments and Public Hearing

Before adopting these proposed regulations as final regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. Written comments, requests to appear, and outlines of oral comments to be presented at a public hearing scheduled for March 26, 1992, at 10 a.m. must be received by March 12, 1992. See the notice of hearing published elsewhere in this issue of the Federal Register.

J. Drafting Information

The principal authors of the international aspects of these regulations are Kenneth D. Allison and Karen S. Holden of the Office of Associate Chief Counsel (International), within the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the international aspects of these regulations.

List of Subjects in 26 CFR

26 CFR 1.301–1 through 1.338(h)(10)–1T

Income taxes, Reporting and recordkeeping requirements, Securities.

26 CFR 1.361–1 through 1.367(e)–2T

Income taxes, Reporting and recordkeeping requirements.

26 CFR 1.921–1T

Exports, Income taxes, Reporting and recordkeeping requirements, United States investments abroad.

Proposed Amendments to the Regulations

The proposed amendments to part 1 of title 26 of the Code of Federal Regulations are as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for 26 CFR part 1 is amended by adding the following citations:

Authority: Sec. 7805, 68A Stat. 917; 26 U.S.C. 7805 * * * Section 1.304–5 also issued under 26 U.S.C. 304 * * * Sections 1.338–0 through 1.338–5, 1.338(b)–1, 1.338(h)(10)–1, and 1.338(i)–1 also issued under 26 U.S.C. 337(d), 338, and 1502.

Par. 2. Section 1.304–5 is added to read as follows:

§ 1.304–5 Control.

(a) *Control requirement in general.* Section 304(c)(1) provides that, for purposes of section 304, control means the ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of shares of all classes of stock. Section 304(c)(3) makes section 318(a) (relating to constructive ownership of stock), as modified by section 304(c)(3)(B), applicable to section 304 for purposes of determining control under section 304(c)(1).

(b) *Effect of section 304(c)(2)(B)*—(1) *In general.* In determining whether the control test with respect to both the issuing and acquiring corporations is satisfied, section 304(a)(1) considers only the person or persons that—

(i) Control the issuing corporation before the transaction,

(ii) Transfer issuing corporation stock to the acquiring corporation for property, and

(iii) Control the acquiring corporation thereafter.

Section 317 defines property to include money, securities, and any other property except stock (or stock rights) in the distributing corporation. However, section 304(c)(2)(B) provides a special rule to extend the relevant group of persons to be tested for control of both the issuing and acquiring corporations to include the person or persons that do not acquire property, but rather solely stock from the acquiring corporation in the transaction. Section 304(c)(2)(B) provides that if two or more persons in control of the issuing corporation transfer stock of such corporation to the acquiring corporation, and if the transferors are in control of the acquiring corporation after the transfer, the person or persons in control of each corporation include each of those transferors. Because the purpose of section 304(c)(2)(B) is to include in the relevant control group the person or persons that retain or acquire acquiring corporation stock in the transaction, only the person or persons transferring stock of the issuing corporation that retain or acquire and proprietary interest in the acquiring corporation are taken into account for purposes of applying section 304(c)(2)(B).

(2) *Example.* This section may be illustrated by the following example.

Example. (a) A, the owner of 20 percent of T's only class of stock, transfers that stock to P solely in exchange for all of the P stock. Pursuant to the same transaction, P, solely in exchange for cash, acquires the remaining 80 percent of the T stock from T's other shareholder, B, who is unrelated to A.

(b) Although A and B together were in control of T (the issuing corporation) before the transaction and A and B each transferred T Stock to P (the acquiring corporation), sections 304(c)(2)(B) and (a)(1) do not apply to B because B did not retain or acquire any proprietary interest in P in the transaction. Section 304(a)(1) also does not apply to A because A (or a control group of P and T of which A was a member) did not control T before the transaction.

(c) *Effective date.* This section is effective [Insert date that final regulations are filed with the **Federal Register**].

Par. 3. The following sections or paragraphs are amended as follows:

(a) Sections 1.338–1T through 1.338–6T are removed.

(b) Section 1.338(b)–1T is removed.

(c) Section 1.338(b)–2T(a)(3) is removed.

(d) Section 1.338(b)–4T is removed.

(e) Section 1.338(h)(10)–1T is removed.

(f) Section 1.367(a)–4T(b)(4) is removed and reserved.

Par. 4. Sections 1.338–0 through 1.338–5 and section 1.338(b)–1 are added to read as follows:

§ 1.338–0 Outline of topics.

This section lists the captions contained in the regulations under section 338.

§ 1.338–1 Elections under section 338.

(a) Scope.
(b) Nomenclature.
(c) Definitions.
(1) Acquisition date.
(2) Affiliated group.
(3) Common parent.
4) Consistency period.
5) Domestic corporation.
6) Old target's final return.
(7) Purchasing corporation.
(8) Qualified stock purchase.
(9) Related persons.
(10) Section 338 election.
(11) Section 338(h)(10) election.
(12) Selling group.
(13) Target; old target; new target.
(14) Target affiliate.
(15) 12-month acquisition period.
(d) Time and manner of making election.
(e) Returns including tax liability from deemed sale.
(1) In general.
(2) Old target's final taxable year otherwise included in consolidated return of selling group.
(i) General rule.
(ii) Separate taxable year.
(iii) Carryover and carryback of tax attributes.
(iv) Old target is a component member of purchasing corporation's controlled group.
(3) Combined deemed sale return.
(i) General rule.
(ii) Gain and loss offsets.
(iii) Procedure for filing a combined return.
(4) Deemed sale excluded from purchasing corporation's consolidated return.
(5) Due date for old target's final return.
(i) General rule.
(ii) Application of § 1.1502–76(c).
(A) In general.
(B) Erroneous filing of deemed sale return.
(C) Erroneous filing of return for regular tax year.
(D) Last date for payment of tax.
(6) Examples.
(f) Waiver.
(1) Certain additions to tax.
(2) Elections or other actions required to be specified on a timely filed return.
(i) In general.
(ii) New target in purchasing corporation's consolidated return.
(3) Moot return not required.
(4) Examples.
(g) Special rules for foreign corporations of DISCs.
(1) Elections by certain foreign purchasing corporations.
(i) General rule.
(ii) Qualifying foreign purchasing corporation.
(iii) Qualifying foreign target.
(iv) Triggering event.
(v) Subject to United States tax.
(2) Acquisition period.
(3) Statement of section 338 election may be filed by United States shareholders in certain cases.
(4) Notice requirement for U.S. persons holding stock in foreign target.
(i) General rule.
(ii) Form of notice.
(iii) Timing of notice.
(iv) Consequence of failure to comply.

§ 1.338–1 Elections under section 338.

(a) *Scope.* This section prescribes rules relating to elections under section 338. Paragraphs (c)(6), (e), and (g) of this section do not apply to a target for which a section 338(h)(10) election is made.

(b) *Nomenclature.* For purposes of the regulations under section 338 (except as otherwise provided):

(1) T is a domestic corporation that has only one class of stock outstanding.

(2) P is a domestic corporation that purchases stock of T in a qualified stock purchase.

(3) The P group is an affiliated group of which P is a member.

(4) P1, P2, etc., are domestic corporations that are members of the P group.

(5) T1,T2, etc., are domestic corporations that are target affiliates of T. These corporations (T1, T2, etc.) have only one class of stock outstanding and may also be targets.

(6) S is a domestic corporation (unrelated to P and B) that owns T prior to the purchase of T by P. (S is referred to in cases in which it is appropriate to consider the effects of having all of the outstanding stock of T owned by a domestic corporation.)

(7) A, a U.S. resident or citizen, is an individual (unrelated to P and B) who owns T prior to the purchase of T by P. (A is referred to in cases in which it is appropriate to consider the effects of having all of the outstanding stock of T owned by an individual who is a U.S. resident or citizen. Ownership of T by A and ownership of T by S are mutually exclusive circumstances.)

(8) B, a U.S. resident or citizen, is an individual (unrelated to T, S, and A) who owns the stock of P.

(9) F, used as a prefix with the other terms in this paragraph (b), connotes foreign, rather than domestic, status. For example, FT is a foreign corporation (as defined in section 7701(a)(5)) and FA is an individual other than a U.S. citizen or resident.

(10) CFC, used as a prefix with the other terms in this paragraph (b) referring to a corporation, connotes a controlled foreign corporation (as defined in section 957, taking into account section 953(c)). A corporation identified with the prefix F may be a controlled foreign corporation. The prefix CFC is used when the corporation's status as a controlled foreign corporation is significant.

(c) *Definitions.* For purposes of the regulations under section 338 (except as otherwise provided):

(1) *Acquisition date.* The term "acquisition date" has the same meaning as in section 338(h)(2).

(2) *Affiliated group.* The term "affiliated group" has the same meaning as in section 338(h)(5). Corporations are affiliated on any day they are members of an affiliated group.

(3) *Common parent.* The term "common parent" has the same meaning as in section 1504.

(4) *Consistency period.* The "consistency period" is the period described in section 338(h)(4)(A) unless extended pursuant to § 1.338–4(j)(1).

(5) *Domestic corporation.* A "domestic corporation" is a corporation—

(i) That is domestic within the meaning of section 7701(a)(4) or that is treated as domestic for purposes of subtitle A of the Code (*e.g.*, to which an election under section 953(d) or 1504(d) applies), and

(ii) That is not a DISC, a corporation described in section 1248(e), or a corporation to which an election under section 936 applies.

(6) *Old target's final return.* "Old target's final return" is the income tax return of old target for the taxable year ending at the close of the acquisition date that includes the deemed sale of assets under section 338. If the disaffiliation rule of paragraph (e)(2)(i) of this section applies, target's "deemed sale return" is considered old target's final return.

(7) *Purchasing corporation.* The term "purchasing corporation" has the same meaning as in section 338(d)(1). Unless otherwise provided, any reference to the purchasing corporation is a reference to all members of the affiliated group of which the purchasing corporation is a member. *See* section 338(h) (5) and (8).

(8) *Qualified stock purchase.* The "qualified stock purchase" has the same meaning as in section 338(d)(3).

(9) *Related persons.* Two persons are related if stock in a corporation owned by one of the persons would be attributed under section 318(a) (other than section 318 (a)(4)) to the other.

(10) *Section 338 election.* A "section 338 election" is an election to apply section 338(a) to target. A section 338 election may be made by filing a statement of section 338 election (Form 8023) pursuant to § 1.338–1(d).

(11) *Section 338(h)(10) election.* A "section 338(h)(10) election" is an election to apply section 338(h)(10) to target. A section 338(h)(10) election may be made by making a joint election for target under § 1.338(h)(10)–1.

(12) *Selling group.* The "selling group" is the affiliated group (as defined in section 1504) that is eligible to file a consolidated return that includes target for the acquisition date and that does not have a target as common parent for the taxable year including the acquisition date.

(13) *Target; old target; new target.* "Target" is the target corporation as defined in section 338(d)(2). "Old target" refers to target for periods ending as of the close of the date of target's deemed sale of assets. "New target" refers to target for subsequent periods.

(14) *Target affiliate.* The term "target affiliate" has the same meaning as in section 338(h)(6) (applied without section 338(h)(6)(B)(i)). Thus, a corporation described in section 338(h)(6)(B)(i) is considered a target affiliate for all purposes of section 338. If a target affiliate is acquired in a qualified stock purchase, it is also a target.

(15) *12-month acquisition period.* The "12-month acquisition period" is the period described in section 338(h)(1), unless extended pursuant to § 1.338–4(j)(2).

(d) *Time and manner of making election.* The purchasing corporation makes a section 338 election for target by filing a statement of section 338 election on Form 8023 not later than the 15th day of the 9th month beginning after the month in which the acquisition date occurs. The statement must contain such information and be filed in the manner specified in the form and its instructions. A single Form 8023 may be filed for any targets acquired by the purchasing corporation from a single affiliated group, provided a separate Form 8023 could be filed timely for each target.

(e) *Returns including tax liability from deemed sale*—(1) *In general.* Except as provided in paragraph (e)(2) of this section, any tax liability resulting from the deemed sale of assets under section 338 is included in the final return of old target filed for old target's taxable year that ends on the acquisition date. If old target is the common parent of an affiliated group, the final return may be a consolidated return (any such consolidated return must also include any tax liability from any deemed sales under section 338 of subsidiaries in the consolidated group that have the same acquisition date as old target and that are acquired by the purchasing corporation).

(2) *Old target's final taxable year otherwise included in consolidated return of selling group*—(i) *General rule.* If target is includable in a consolidated return filed by the selling group for a period that includes the acquisition date, old target is disaffiliated from that group immediately before its deemed sale of assets under section 338 and must file a final return including only the items resulting from the deemed sale and the carryover items specified in paragraph (e)(2)(iii) of this section ("deemed sale return"). The deemed sale occurs at the close of the acquisition date and is the last transaction of old target. Any transactions of old target occurring on the acquisition date other than the deemed sale are reported in the selling group's consolidated return. A deemed sale return includes a "combined return" as defined in paragraph (e)(3) of this section.

(ii) *Separate taxable year.* The deemed sale of old target reported in the

deemed sale return under this paragraph (e)(2) occurs in a separate taxable year, except that the sale is treated as occurring in the same taxable year of target as is represented by the selling group's consolidated return (for the period including the acquisition date) for purposes of determining the number of years in a carryover or carryback period.

(iii) *Carryover and carryback of tax attributes.* Target's attributes may be carried over to, and carried back from, the deemed sale return under the rules applicable to a corporation that ceases to be a member of a consolidated group.

(iv) *Old target is a component member of purchasing corporation's controlled group.* For purposes of its deemed sale return, target is a component member of the controlled group of corporations including the purchasing corporation unless target is treated as an excluded member under section 1563(b)(2).

(3) *Combined deemed sale return*—(i) *General rule.* Under section 338(h)(15), a combined deemed sale return ("combined return") may be filed for all targets from a single selling consolidated group (as defined in § 1.338(h)(10)–1(c)(3)) that are acquired by the purchasing corporation on the same acquisition date and that otherwise would be required to file separate deemed sale returns. The combined return must include all such targets. For example, T and T1 may be included in a combined return if—

(A) T and T1 are directly owned subsidiaries of S,

(B) S is the common parent of a consolidated group, and

(C) P makes qualified stock purchases of T and T1 on the same acquisition date.

(ii) *Gain and loss offsets.* Gains and losses recognized on the deemed sale of assets by targets included in a combined return are treated as the gains and losses of a single target. In addition, loss carryovers of a target that were not subject to the separate return limitation year restrictions ("SRLY restrictions") of the consolidated return regulations while that target was a member of the selling consolidated group may be applied without limitation to the gains of other targets included in the combined return. If, however, a target has loss carryovers that were subject to the SRLY restrictions while that target was a member of the selling consolidated group, the use of those losses in the combined return continues to be subject to those restrictions, applied in the same manner as if the combined return were a consolidated return. A similar rule applies to tax credits.

(iii) *Procedure for filing a combined return.* A combined return is made by filing a single corporation income tax return in lieu of separate deemed sale returns for all targets required to be included in the combined return. The combined return reflects the deemed sales of all targets required to be included in the combined return. If the targets included in the combined return constitute a single affiliated group within the meaning of section 1504(a), the income tax return is signed by an officer of the common parent of that group. Otherwise, the return must be signed by an officer of each target included in the combined return. Rules similar to the rules in § 1.1502–75(j) apply for purposes of preparing the combined return. The combined return must include an attachment prominently identified as an "ELECTION TO FILE A COMBINED RETURN UNDER SECTION 338(h)(15)." The attachment must—

(A) Contain the name, address, and employer identification number of each target required to be included in the combined return,

(B) Contain the following declaration (or a substantially similar declaration): "EACH TARGET IDENTIFIED IN THIS ELECTION TO FILE A COMBINED RETURN CONSENTS TO THE FILING OF A COMBINED RETURN," and

(C) For each target, be signed by a person who states under penalties of perjury that he or she is authorized to act on behalf of such target.

(4) *Deemed sale excluded from purchasing corporation's consolidated return.* Any tax liability resulting from the deemed sale of target assets under section 338 may not be included in any consolidated return of any affiliated group that includes the purchasing corporation.

(5) *Due date for old target's final return*—(i) *General rule.* Old target's final return is generally due on the 15th day of the third calendar month following the month in which the acquisition date occurs. See section 6072 (time for filing income tax returns).

(ii) *Application of § 1.1502–76 (c)*—(A) *In general.* Section 1.1502–76(c) applies to old target's final return if old target was a member of a selling group that did not file consolidated returns for the taxable year of the common parent that precedes the year that includes old target's acquisition date. If the selling group has not filed a consolidated return that includes old target's taxable period that ends on the acquisition date, target may, on or before the final return due date (including extensions), either—

(*1*) File a deemed sale return on the assumption that the selling group will file the consolidated return, or

(*2*) File a return for so much of old target's taxable period as ends at the close of the acquisition date on the assumption that the consolidated return will not be filed.

See § 1.1502–76(c)(2). For purposes of applying § 1.1502–76(c)(2), an extension of time to file old target's final return is considered to be in effect until the last date for making the election under section 338.

(B) *Erroneous filing of deemed sale return.* If, pursuant to this paragraph (e)(5)(ii), target files a deemed sale return but the selling group does not file a consolidated return, target must file a substituted return for old target not later than the due date (including extensions) for the return of the common parent with which old target would have been included in the consolidated return. The substituted return is for so much of old target's taxable year as ends at the close of the acquisition date. Under § 1.1502–76(c)(2), the deemed sale return is not considered a return for purposes of section 6011 (relating to the general requirement of filing a return) if a substituted return must be filed.

(C) *Erroneous filing of return for regular tax year.* If, pursuant to this paragraph (e)(5)(ii), target files a return for so much of old target's regular taxable year as ends at the close of the acquisition date but the selling group files a consolidated return, target must file an amended return for old target not later than the due date (including extensions) for the selling group's consolidated return. (The amended return is a deemed sale return.)

(D) *Last date for payment of tax.* If either a substituted or amended final return of old target is filed pursuant to this paragraph (e)(5)(ii), the last date prescribed for payment of tax is the final return due date (as defined in paragraph (e)(5)(i) of this section).

(6) *Examples.* This paragraph (e) may be illustrated by the following examples:

Example 1. (a) S is the common parent of a consolidated group that includes T. The S group files calendar year consolidated returns. At the close of June 30, 1993, P makes a qualified stock purchase of T from S. P makes a section 338 election for T, and the deemed sale of T's assets occurs as of the close of T's acquisition date (June 30).

(b) T is considered disaffiliated for purposes of reporting the deemed sale. Accordingly, T is included in the S group's consolidated return through T's acquisition date except that the tax liability resulting from the deemed sale of assets is reported in a separate deemed sale return of T. Provided that T is not treated as an excluded member under section 1563(b)(2), T is a component member of P's controlled group for the taxable year represented by the deemed sale.

and the taxable income bracket amounts available in calculating tax on the deemed sale return must be limited accordingly.

(c) If P purchased the stock of T at 10 a.m. on June 30, 1993, the results would be the same. See paragraph (e)(2)(i) of this section.

Example 2. The facts are the same as in *Example 1*, except that the S group does not file consolidated returns. T must file a separate return for its taxable year ending on June 30, 1993, which includes the deemed sale.

(f) *Waiver*—(1) *Certain additions to tax.* An addition to tax or additional amount (addition) under Subchapter A of Chapter 68 arising on or before the last day for making the election under section 338, by reason of circumstances that would not exist but for an election under section 338, is waived if—

(i) Under the particular statute the addition is excusable upon a showing of reasonable cause, and

(ii) Corrective action is taken on or before the last day.

The Service should be notified at the time of correction (*e.g.*, by attaching a statement to a return that constitutes corrective action) that the waiver rule of this paragraph (f) is being asserted.

(2) *Elections or other actions required to be specified on a timely filed return*—(i) *In general.* If paragraph (f)(1) of this section applies or would apply if there was an underpayment, any election or other action that must be specified on a timely filed return for the taxable period covered by the late filed return described in paragraph (f)(1) of this section is considered timely if specified on a late-filed return filed on or before the last day for making the election under section 338.

(ii) *New target in purchasing corporation's consolidated return.* If new target is includible for its first taxable year in a consolidated return filed by the affiliated group of which the purchasing cooperation is a member on or before the last day for making the election under section 338, any election or other action that must be specified in a timely filed return for new target's first taxable year (but which is not specified in the consolidated return) is considered timely if specified in an amended return filed on or before such last day, with the Internal Revenue Service Center with which the consolidated return was filed.

(3) *Moot return not required.* If a timely election under section 338 is made, an income tax return need not be filed for the taxable year of old target which, had an election not been made, would have included any day after the acquisition date.

(4) *Examples.* This paragraph (f) may be illustrated by the following examples:

Example 1. T is an unaffiliated corporation with a tax year ending March 31. At the close of September 20, 1992, P makes a qualified stock purchase of T. P does not file consolidated returns. P makes a section 338 election for T on or before June 15, 1993, which causes T's taxable year to end as of the close of September 20, 1992. An income tax return for T's taxable period ending on September 20, 1992, was due on December 15, 1992. Additions to tax for failure to file a return and to pay tax shown on a return will not be imposed if T's return is filed and the tax paid on or before June 15, 1993. (This waiver applies even if the acquisition date coincides with the last day of T's former taxable year, *i.e.*, March 31, 1993.) Interest on any underpayment of tax for old T's short taxable year ending September 20, 1992, runs from December 15, 1992. A statement indicating that the waiver rule of § 1.338–1(f) is being asserted should be attached to T's return.

Example 2. Assume the same facts as in *Example 1.* Assume further that new T adopts the calendar year by filing, on or before June 15, 1993, its first return (for the period beginning on September 21, 1992, and ending on December 31, 1992) indicating that a calendar year is chosen. See § 1.338–2(d)(8). Any additions to tax or amounts described in this paragraph (f) which arise by reason of the late filing of a return for the period ending on December 31, 1992, are waived, because they are based on circumstances that would not exist but for the section 338 election. Notwithstanding this waiver, however, the return is still considered due March 15, 1993, and interest on any underpayment runs from that date.

Example 3. Assume the same facts as in *Example 2*, except that T's former taxable year ends on October 31. Although prior to the election of T had a return due on January 15, 1993, that return need not be filed because a timely election under section 338 was made. See paragraph (f)(3) of this section.

(g) *Special rules for foreign corporations or DISCs*—(1) *Elections by certain foreign purchasing corporations.*—(i) *General rule.* A qualifying foreign purchasing corporation is not required to file a statement of section 338 election for a qualifying foreign target before the earlier of 3 years after the acquisition date and the 180th day after the close of the purchasing corporation's taxable year within which a triggering event occurs.

(ii) *Qualifying foreign purchasing corporation.* A purchasing corporation is a "qualifying foreign purchasing corporation" only if, during the acquisition period of a qualifying foreign target, all the corporations in the purchasing corporation's affiliated group are foreign corporations that are not subject to United States tax.

(iii) *Qualifying foreign target.* A target is a "qualifying foreign target" only if target and its target affiliates are foreign corporations that, during target's acquisition period, are not subject to United States tax (and will not become subject to United States tax during such period by reason of a section 338 election). A target affiliate is taken into account for purposes of the preceding sentence only if, during target's 12-month acquisition period, it is or becomes a member of the affiliated group that includes the purchasing corporation.

(iv) *Triggering event.* A triggering event occurs in the taxable year of the qualifying foreign purchasing corporation in which either that corporation or any corporation in its affiliated group becomes subject to United States tax.

(v) *Subject to United States tax.* For purposes of this paragraph (g)(1), a foreign corporation is considered "subject to United States tax"—

(A) For the taxable year for which that corporation is required under § 1.6012–2(g) (other than § 1.6012–2(g)(2)(i)(*b*)(*2*)) to file a United States income tax return, or

(B) For the period during which that corporation is a controlled foreign corporation, a passive foreign investment company for which an election under section 1295 is in effect, a foreign investment company, or a foreign corporation the stock ownership of which is described in section 552(a)(2).

(2) *Acquisition period.* For purposes of this paragraph (g), the term "acquisition period" means the period beginning on the first day of the 12-month acquisition period and ending on the acquisition date.

(3) *Statement of section 338 election may be filed by United States shareholders in certain cases.* The United States shareholders (as defined in section 951(b)) of a foreign purchasing corporation that is a controlled foreign corporation (as defined in section 957 (taking into account section 953(c))) may file a statement of section 338 election on behalf of the purchasing corporation if the purchasing corporation is not required under § 1.6012–2(g) (other than § 1.6012–2(g)(2)(i)(*b*)(*2*)) to file a United States income tax return for its taxable year that includes the acquisition date. Form 8023 must be filed as described in the form and its instructions and also must be attached to the Form 5471 (information return with respect to a foreign corporation) filed with respect to the purchasing corporation by each United States shareholder for the purchasing corporation's taxable year that includes the acquisition date (or, if paragraph (g)(1)(i) of this section applies to the election, for the purchasing

corporation's taxable year within which it becomes a controlled foreign corporation). The provisions of § 1.964–1(c) (including § 1.964–1(c)(7)) do not apply to an election made by the United States shareholders.

(4) *Notice requirement for U.S. persons holding stock in foreign target*—(i) *General rule.* If a target subject to a section 338 election was a controlled foreign corporation, a passive foreign investment company, or a foreign personal holding company at any time during the portion of its taxable year that ends on its acquisition date, the purchasing corporation must deliver written notice of the election (and a copy of Form 8023, its attachments and instructions) to—

(A) Each U.S. person (other than a member of the affiliated group of which the purchasing corporation is a member ("the purchasing group menmber")) that, on the acquisition date of the foreign target, holds stock in the foreign target, and

(B) Each U.S. person (other than a purchasing group member) that sells stock in the foreign target to a group member during the foreign target's 12-month acquisition period.

The notice requirement of this paragraph (g)(4) applies only where the section 338 election for the foreign target affects income, gain, loss, deduction, or credit of the U.S. person described in this paragraph (g)(4)(i) under section 551, 951, 1248, or 1293.

(ii) *Form of notice.* The notice to U.S. persons must be identified prominently as a notice of section 338 election and must—

(A) Contain the name, address, and employer identification number (if any) of, and the country (and, if relevant, the lesser political subdivision) under the laws of which is organized, the purchasing corporation and the relevant target (*i.e.*, target the stock of which the particular U.S. person held or sold under the circumstances described in paragraph (g)(4)(i) of this section),

(B) Identify those corporations as the purchasing corporation and the foreign target, respectively, and

(C) Contain the following declaration (or a substantially similar declaration): "THIS DOCUMENT SERVES AS NOTICE OF AN ELECTION UNDER SECTION 338 FOR THE ABOVE CITED FOREIGN TARGET THE STOCK OF WHICH YOU EITHER HELD OR SOLD UNDER THE CIRCUMSTANCES DESCRIBED IN TREASURY REGULATIONS § 1.338–1(g)(4)(i). FOR POSSIBLE UNITED STATES FEDERAL INCOME TAX CONSEQUENCES UNDER SECTION 551, 951, 1248, OR 1293 OF THE INTERNAL REVENUE CODE OF 1986 THAT MAY APPLY TO YOU, SEE TREASURY REGULATIONS § 1.338–5(b). YOU MAY BE REQUIRED TO ATTACH THE INFORMATION ATTACHED TO THIS NOTICE TO CERTAIN RETURNS."

(iii) *Timing of notice.* The notice required by this paragraph (g)(4) must be delivered to the U.S. person on or before the later of—

(A) The 120th day after the acquisition date of the particular target, or

(B) The day on which Form 8023 is filed.

If notice is delivered by United States mail, the date of the United States postmark is deemed to be the date of delivery.

(iv) *Consequence of failure to comply.* A statement of section 338 election is not valid if timely notice is not given to one or more U.S. persons described in paragraph (g)(4)(i) of this section. If the form of notice fails to comply with all requirements of this paragraph (g)(4), the section 338 election is valid, but the waiver rule of paragraph (f)(1) of this section does not apply.

(v) *Good faith effort to comply.* The purchasing corporation will be considered to have complied with this paragraph (g)(4), even though it failied to provide notice or provide timely notice to each person described in paragraph (g)(4)(i) of this section, if the Commissioner determines that the purchasing corporation made a good faith effort to identify and provide timely notice to those U.S. persons.

§ 1.338–2 Miscellaneous issues under section 338.

(a) *Scope.* This section provides guidance on miscellaneous issues under section 338.

(b) *Rules relating to qualified stock purchases*—(1) *Purchasing corporation requirement.* An individual cannot make a qualified stock purchase of target. Section 338(d)(3) requires, as a condition of a qualified stock purchase, that a corporation purchase the stock of target. If an individual forms a corporation ("new P") to acquire target stock, new P can make a qualified stock purchase of target if new P is considered for tax purposes to purchase the target stock. Facts that may indicate that new P does not purchase the target stock include that new P merges downstream into target, liquidates, or otherwise disposes of the target stock following the purported qualified stock purchase.

(2) *Purchase*—(i) *Definition.* The term "purchase" has the same meaning as in section 338(h)(3).

(ii) *Examples.* This paragraph (b)(2) may be illustrated by the following examples:

Example 1. A, who owns all of the stock of P and T, sells the T stock to P for cash. A is treated under section 304(a)(1) as receiving a distribution in redemption of the P stock. P is treated as receiving the T stock as a contribution to its capital. Under section 362(a) and § 1.304–2(a), P's basis in the T stock is determined by reference to A's adjusted basis in the stock. Thus, under section 338(h)(3)(A)(i), P is not considered to have acquired the T stock by purchase.

Example 2. P exchanges cash for all of the stock of N, a newly formed corporation. N was formed for the sole purpose of acquiring all of the T stock by means of a reverse subsidiary cash merger. Prior to the merger, N conducted no activities other than those required for the merger. Pursuant to the plan, N merges into T, and the T shareholders receive cash for their T stock. No T shareholder is related to P, and no group of T shareholders controls P within the meaning of section 304(c). The existence of N is disregarded, and P is considered to acquire the T stock directly from the T shareholders for cash. Thus, P is considered to have acquired the T stock by purchase.

(3) *Date of purchase from related corporation*—(i) *In general.* Stock acquired by a purchasing corporation from a related corporation ("R") is generally not considered acquired by purchase, *See* section 338(h)(3)(A)(iii). However, if section 338(h)(3)(C) applies and the purchasing corporation is treated as acquiring stock by purchase from R, solely for purposes of determining when the stock is considered acquired—

(A) Target stock acquired from R is considered to have been acquired by the purchasing corporation on the day on which the purchasing corporation is first considered to own that stock under section 318(a) (other than section 318(a)(4)), and

(B) If such stock first may be considered owned by the purchasing corporation on more than one date, such stock is deemed acquired on the earliest date first to the extent thereof, then on the next earliest date, and so on.

(ii) *Examples.* This paragraph (b)(3) may be illustrated by the following examples:

Example 1. (a) On January 1, 1994, P purchases 75 percent in value of the R stock. On that date, R owns 4 of the 100 shares of T stock. On June 1, 1994, R acquires an additional 16 shares of T stock. On December 1, 1994, P purchases 70 shares of T stock from an unrelated person and 12 of the 20 shares of T stock held by R.

(b) Of the 12 shares of T stock purchased by P from R on December 1, 1994, 3 of those shares are deemed to have been acquired by P on January 1, 1994, the date on which 3 of the 4 shares of T stock held by R on that date were first considered owned by P under section 318(a)(2)(C) (*i.e.*, 4 x .75). The remaining 9 shares of T stock purchased by P

from R on December 1, 1994; are deemed to have been acquired by P on June 1, 1994, the date on which an additional 12 of the 20 shares of T stock owned by R on that date were first considered owned by P under section 318(a)(2)(C) (*i.e.*, (20 x .75) −3). Because stock acquisitions by P sufficient for a qualified stock purchase of T occur within a 12-month period (*i.e.*, 3 shares constructively on January 1, 1994, 9 shares constructively on June 1, 1994, and 70 shares actually on December 1, 1994), a qualified stock purchases is made on December 1, 1994.

Example 2. (a) On February 1, 1993, P acquires 25 percent in value of the R stock from B (the sole shareholder of P). That R stock is not acquired by purchase. *See* section 338(h)(3)(A)(iii). On that date, R owns 4 of the 100 shares of T stock. On June 1, 1993, P purchases an additional 25 percent in value of the R stock, and on January 1, 1994, P purchases another 25 percent in value of the R stock. On June 1, 1994, R acquires an additional 16 shares of the T shock. On December 1, 1994, P purchases 68 shares of the T stock from an unrelated person and 12 of the 20 shares of the T stock held by R.

(b) Of the 12 shares of the T stock purchased by P from R on December 1, 1994, 2 of those shares are deemed to have been acquired by P on June 1, 1993, the date on which 2 of the 4 shares of the T stock held by R on that date were first considered owned by P under section 318(a)(2)(C) (*i.e.*, 4 x .5). For purposes of this attribution, the R stock need not be acquired by P by purchase. *See* section 338(h)(1). (By contrast, the acquisition of the T stock by P from R does not qualify as a purchase unless P has acquired at least 50 percent in value of the R stock by purchase. Section 338(h)(3)(C)(i).) Of the remaining 10 shares of the T stock purchased by P from R on December 1, 1994, 1 of those shares is deemed to have been acquired by P on January 1, 1994, the date on which an additional 1 share of the 4 shares of the T stock held by R on that date was first considered owned by P under section 318(a)(2)(C) (*i.e.*, (4 x .75) −2). The remaining 9 shares of the T stock purchased by P from R on December 1, 1994, are deemed to have been acquired by P on June 1, 1994, the date on which an additional 12 shares of the T stock held by R on that date were first considered owned by P under section 318(a)(2)(C) (*i.e.*, (20 x .75) −3). Because a qualified stock purchase of T by P is made on December 1, 1994, only if all 12 shares of the T stock purchased by P from R on that date are considered acquired during a 12-month period ending on that date (so that, in conjunction with the 68 shares of the T stock P purchased on that date from the unrelated person, 80 of T's 100 shares are acquired by P during a 12-month period) and because 2 of those 12 shares are considered to have been acquired by P more than 12 months before December 1, 1994 (*i.e.*, on June 1, 1993), a qualified stock purchase is not made. (Under § 1.338-4(j)(2), for purposes of applying the consistency rules, P is treated as making a qualified stock purchase of T if, pursuant to an arrangement, P purchases T stock satisfying the requirements of section 1504(a)(2) over a period of more than 12 months.)

Example 3. Assume the same facts as in *Example 2*, except that on February 1, 1993, P acquires 25 percent in value of the R stock by purchase. The result is the same as in *Example 2*.

(4) *Acquisition date for tiered targets*—(i) *Stock sold in deemed asset sale.* If an election under section 338 is made for target, old target is deemed to sell target's assets and new target is deemed to acquire those assets. Under section 338(h)(3)(B), new target's deemed purchase of stock of another corporation is a purchase for purposes of section 338(d)(3) on the acquisition date of target. If new target's deemed purchase causes a qualified stock purchase of the other corporation and if a section 338 election is made for the other corporation, the acquisition date for the other corporation is the same as the acquisition date of target. However, the deemed sale and purchase of the other corporation's assets is considered to take place instantaneously after the deemed sale and purchase of target's assets.

(ii) *Examples.* This paragraph (b)(4) may be illustrated by the following examples:

Example 1. A owns all of the T stock. T owns 50 of the 100 shares of X stock. The other 50 shares of X stock are owned by corporation Y, which is unrelated to A, T, or P. On January 1, 1995, P makes a qualified stock purchase of T from A and makes a section 338 election for T. On December 1, 1995, P purchases the 50 shares of X stock held by Y. A qualified stock purchase of X is made on December 1, 1995, because the deemed purchase of 50 shares of X stock by new T by reason of the section 338 election for T and the actual purchase of 50 shares of X stock by P are treated as purchases made by one corporation. Section 338(h)(8). For purposes of determining whether those purchases occur within a 12-month acquisition period as required by section 338(d)(3), T is deemed to purchase its stock on T's acquisition date, *i.e.*, January 1, 1995.

Example 2. On January 1, 1994, P makes a qualified stock purchase of T and makes a section 338 election for T. On that day, T sells all of the stock of T1 to A. Although T held all of the T1 stock on T's acquisition date, T is not considered to have purchased the T1 stock by reason of the section 338 election for T. In order for T to be treated as purchasing the T1 stock, T must hold the T1 stock when T's deemed sale of assets occurs pursuant to section 338(a). The deemed sale of assets is considered the last transaction of old T at the close of T's acquisition date. Accordingly, the T1 stock actually disposed of by T on the acquisition date is not included in the deemed sale of assets. Thus, T does not make a qualified stock purchase of T1.

(5) *Effect of redemptions*—(i) *General rule.* Except as provided in this paragraph (b)(5), a qualified stock purchase is made on the first day on which the percentage ownership requirements of section 338(d)(3) are satisfied by reference to target stock that is both (A) held on that day by the purchasing corporation and (B) purchased by the purchasing corporation during the 12-month period ending on that day.

(ii) *Redemptions from persons unrelated to the purchasing corporation.* Target stock redemptions from persons unrelated to the purchasing corporation that occur at any time before the close of the 12-month acquisition period are taken into account as reductions in target's outstanding stock for purposes of determining whether target stock purchased by the purchasing corporation in the 12-month acquisition period satisfies the percentage ownership requirements of section 338(d)(3).

(iii) *Redemptions from the purchasing corporation or related persons during 12-month acquisition period*—(A) *General rule.* For purposes of the percentage ownership requirements of section 338(d)(3), a redemption of target stock during the 12-month acquisition period from the purchasing corporation or from any person related to the purchasing corporation is not taken into account as a reduction in target's outstanding stock.

(B) *Exception for certain redemptions from related corporations.* A redemption of target stock during the 12-month acquisition period from a corporation related to the purchasing corporation is taken into account as a reduction in target's outstanding stock to the extent that the redeemed stock would have been considered purchased by the purchasing corporation (by reason of section 338(h)(3)(C)) during the 12-month acquisition period if the redeemed stock had been acquired by the purchasing corporation from the related corporation on the day of the redemption. *See* paragraph (b)(3) of this section.

(iv) *Examples.* This paragraph (b)(5) may be illustrated by the following examples:

Example 1. OSP on stock purchase date; redemption from unrelated person during 12-month period. A owns all 100 shares of T stock. On January 1, 1994, P purchases 40 shares of the T stock from A. On July 1, 1994, T redeems 25 shares from A. On December 1, 1994, P purchases 20 shares of the T stock from A. P makes a qualified stock purchase of T on December 1, 1994, because the 60 shares of T stock purchased by P within the 12-month period ending on that date satisfy the 80-percent ownership requirements of section 338(d)(3) (*i.e.*, 60/75 shares), determined by taking into account the redemption of 25 shares.

Example 2. OSP on stock redemption date; redemption from unrelated person during 12-

month period. The facts are the same as in *Example 1*, except that P purchases 60 shares of T stock on January 1, 1994, and none on December 1, 1994. P makes a qualified stock purchase of T on July 1, 1994, because that is the first day on which the T stock purchased by P within the preceding 12-month period satisfies the 80-percent ownership requirements of section 338(d)(3) (*i.e.*, 60/75 shares), determined by taking into account the redemption of 25 shares.

Example 3. Redemption from unrelated person more than 12 months before stock purchase. A owns all 100 shares of T stock. On January 1, 1994, T redeems 25 of its shares. On January 15, 1995, P purchases 60 shares of T stock from A. P makes a qualified stock purchase of T on January 15, 1995. The 60 shares of T stock purchased by P within the 12-month period ending on that date satisfy the 80-percent ownership requirements of section 338(d)(3) (*i.e.*, 60/75 shares), determined by taking into account the redemption of 25 shares. It is irrelevant that the redemption occurred before the 12-month acquisition period.

Example 4. Redemption from unrelated person more than 12 months after stock purchase. The facts are the same as in *Example 3*, except that the redemption occurs on April 1, 1996. P does not make a qualified stock purchase of T on April 1, 1996. The 80-percent ownership requirements of section 338(d)(3) are not satisfied on that date by reference to T stock that was purchased during the preceding 12 months, because such stock represents only 60 percent of the T stock (*i.e.*, 60/100 shares), determined without taking into account the redemption of 25 shares. (Under § 1.338–4(j)(2), for purposes of applying the consistency rules, P is treated as making a qualified stock purchase of T if, pursuant to an arrangement, P purchases T stock satisfying the requirements of section 1504(a)(2) over a period of more than 12 months.)

Example 5. Redemption from purchasing corporation not taken into account. On December 15, 1993, T redeems 30 percent of its stock from P. The redeemed stock was held by P for several years and constituted P's total interest in T. On December 1, 1994, P purchases the remaining T stock from A. P does not make a qualified stock purchase of T on December 1, 1994. For purposes of the 80-percent ownership requirements of section 338(d)(3), the redemption of P's T stock on December 15, 1993, is not taken into account as a reduction in T's outstanding stock.

Example 6. Redemption from related person taken into account. On January 1, 1995, P purchases 60 of the 100 shares of X stock. On that date, X owns 40 of the 100 shares of T stock. On April 1, 1995, T redeems X's T stock and P purchases the remaining 60 shares of T stock from an unrelated person. For purposes of the 80-percent ownership requirements of section 338 (d) (3), the redemption of the T stock from X (a person related to P) is taken into account as a reduction in T's outstanding stock. If P had purchased the 40 redeemed shares from X on April 1, 1995, all 40 of the shares would have been considered purchased (by reason of section 338(h)(3)(C)(i)) during the 12-month period ending on April 1, 1995 (24 of the 40 shares would have been considered purchased by P on January 1, 1995, and the remaining 16 shares would have been considered purchased by P on April 1, 1995). *See* paragraph (b)(3) of this section. Accordingly, P makes a qualified stock purchase of T on April 1, 1995, because the 60 shares of T stock purchased by P on that date satisfy the 80-percent ownership requirements of section 338(d)(3) (*i.e.*, 60/60 shares), determined by taking into account the redemption of 40 shares.

(c) *Effect of post-acquisition events on eligibility for section 338 election—(1) Post-acquisition elimination of target.* (i) The purchasing corporation may make an election under section 338 for target after target is liquidated on or after the acquisition date. If target liquidates on the acquisition date, the liquidation is considered to occur on the following day and immediately after new target's deemed purchase of assets. The purchasing corporation may also make an election under section 338 for target after target is merged into another corporation, or otherwise disposed of by the purchasing corporation provided that, under the facts and circumstances, the purchasing corporation is considered for tax purposes as the purchaser of the target stock.

(ii) This paragraph (c)(1) may be illustrated by the following examples:

Example 1. On January 1, 1995, P makes a qualified stock purchase of T. On June 1, 1995, P sells the T stock to an unrelated person. Assuming that P is considered for tax purposes as the purchaser of the T stock, P remains eligible, after June 1, 1995, to make a section 338 election for T.

Example 2. On January 1, 1995, P makes a qualified stock purchase of T. On that date, T owns the stock of T1. On March 1, 1995, T sells the T1 stock to an unrelated person. On April 1, 1995, P makes a section 338 election for T. Notwithstanding that the T1 stock was sold on March 1, 1995, the section 338 election for T on April 1, 1995, results in a qualified stock purchase by T of T1 on January 1, 1995. *See* paragraph (b)(4)(i) of this section.

(2) *Post-acquisition elimination of the purchasing corporation.* An election under section 338 may be made for target after the purchasing corporation is liquidated or merged into another corporation in a transaction described in section 381(a) provided that the purchasing corporation is considered for tax purposes as the purchaser of the target stock. The acquiring corporation in the section 381(a) transaction may make an election under section 338 for target.

(d) *Miscellaneous matters affecting new target*—(1) *Effect of old target tax liabilities.* For purposes of subtitle F of the Code, new target is treated as a continuation of old target. Thus, new target is liable for old target's federal income tax liabilities, including tax liabilities resulting from the deemed asset sale and those tax liabilities of the other members of the selling group of old target that are attributable to taxable years in which those corporations and old target joined in a consolidated return. *See* § 1.1502–6(a).

(2) *Availability of recovery deductions.* New target generally is permitted to take recovery deductions on recovery property acquired in the deemed purchase of assets, and may make new elections under section 168 without regard to the elections made by old target. For purposes of section 168, old target is not a related person with respect to new target.

(3) *Effect of acquisition of partnership interest in deemed purchase.* The provisions of subchapter K of the Code (relating to partners and partnerships), including sections 743 and 754, apply as if the deemed sale and purchase under section 338(a) were an actual sale and purchase.

(4) *Employment taxes.* Wages earned by the employees of old target are considered wages earned by such employees from new target for purposes of sections 3101 and 3111 (Federal Insurance Contributions Act) and section 3301 (Federal Unemployment Tax Act).

(5) *Employee plans.* Old target and new target are treated as a single employer for purposes of the rules applicable to employee benefit plans (including those plans described in sections 79, 104, 105, 120, 125, 127, and 129), qualified pension, profit-sharing, stock bonus and annuity plans (sections 401(a) and 403(a)), simplified employee pensions (section 408(k)), and tax qualified stock option plans (sections 422 and 423).

(6) *Application of mitigation provisions.* If a section 338(h)(10) election is not made for target, old target and new target are treated as the same taxpayer for purposes of sections 1311–1314 (relating to the mitigation of the effect of limitations).

(7) *EIN not affected.* New target must use the same employer identification number old target used.

(8) *New target's taxable year and method of accounting*—(i) *Selection.* Except as otherwise provided in the Code and the Income Tax Regulations, new target may adopt, without obtaining prior approval from the Commissioner, any taxable year that meets the requirements of section 441 and any method of accounting that meets the requirements of section 446.

(ii) *First return due on or before certain time.* Notwithstanding § 1.411–1T(b)(2), a new target may adopt a taxable year for which the first return is due (not including extensions of time) on or before the last day for making the election under section 338 by filing its first return as new target for the desired taxable year on or before that date.

§ 1.338–3 Deemed sale and aggregate deemed sale price.

(a) *Scope.* This section provides guidance regarding the recognition of gain or loss on the deemed sale of target affiliate stock. This section also provides guidance regarding the determination of the price (the "aggregate deemed sale price") at which old target is treated as selling its assets in the section 338(a)(1) deemed sale for purposes of determining the gain or loss recognized by target in the deemed sale. Notwithstanding section 338(h)(6)(B)(ii), stock held by a target affiliate in a foreign corporation or in a corporation that is a DISC or that is described in section 1248(e) is not excluded from the operation of section 338.

(b) *Definitions.* For purposes of the regulations under section 338:

(1) *ADSP.* The "ADSP" is the aggregate deemed sale price, *i.e.*, the price at which target is deemed to have sold all of its assets in the deemed sale under section 338(a)(1). In the absence of a subscript, "ADSP" refers to ADSP for Class III assets only.

(2) *Elective ADSP formula.* The "elective ADSP formula" is an elective formula prescribed under section 338(h)(11) for determining the ADSP, which takes into account liabilities and other relevant items.

(3) *Allocable ADSP amount.* The "allocable ADSP amount" is the portion of the ADSP as calculated under the elective ADSP formula that is allocable to a particular target asset. Except as provided in section 7701(g) (relating to fair market value in the case of nonrecourse indebtedness), the ADSP is allocated among target assets for this purpose in accordance with the rules in § 1.338(b)–2T (without regard to § 1.338(b)–2T(c)(2)). Deemed sale gain on a target asset under the elective ADSP formula is computed by reference to the allocable ADSP amount for that asset.

(4) *Deemed sale gain.* "Deemed sale gain" is gain (or loss) that is recognized in the section 338(a)(1) deemed sale.

(5) *Classes of assets.* The four classes of assets are defined in § 1.338(b)–2T(b).

(c) *Deemed sale of target affiliate stock*—(1) *In general.* This paragraph (c) prescribes rules relating to the treatment of gain or loss realized on the deemed sale of stock of a target affiliate where a section 338 election (but not a section 338(h)(10) election) is made for the target affiliate. For purposes of this paragraph (c), the definition of domestic corporation in § 1.338–1(c)(5) is applied without the exclusion therein for DISCs, corporations described in section 1248(e), and corporations to which an election under section 936 applies.

(2) *General rule.* Except as otherwise provided in this paragraph (c), if a section 338 election is made for target, no gain or loss is recognized by target on the deemed sale of stock of a target affiliate having the same acquisition date and for which a section 338 election is made if—

(i) Target directly owns stock in the target affiliate satisfying the requirements of section 1504(a)(2),

(ii) Target and the target affiliate are members of a consolidated group filing a final consolidated return described in § 1.338–1(e)(1), or

(iii) Target and the target affiliate file a combined return under § 1.338–1(e)(3).

(3) *Deemed sale of foreign target affiliate by a domestic target.* Gain or loss is recognized by a domestic target on the deemed sale of stock of a foreign target affiliate. For the proper treatment of such gain or loss, see, *e.g.*, sections 1246, 1248, 1291 *et seq.*, and 338(h)(16) and § 1.338–5.

(4) *Deemed sale producing effectively connected income.* Gain or loss is recognized by a foreign target on the deemed sale of stock of a foreign target affiliate to the extent that such gain or loss is effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States.

(5) *Deemed sale of insurance company target affiliate electing under section 953(d).* Gain (but not loss) is recognized by a domestic target on the deemed sale of stock of a target affiliate that has in effect an election under section 953(d) in an amount equal to the lesser of the gain realized or the earnings and profits described in section 953(d)(4)(B).

(6) *Deemed sale of DISC target affiliate.* Gain (but not less) is recognized by a foreign or domestic target on the deemed sale of stock of a target affiliate that is DISC or a former DISC (as defined in section 992(a)) in an amount equal to the lesser of the gain realized or the amount of accumulated DISC income determined with respect to such stock under section 995(c). Such gain is included in gross income as a dividend as provided in sections 995(c)(2) and 996(g).

(7) *Anti-stuffing rule.* If an asset the adjusted basis of which exceeds its fair market value is contributed or transferred to a target affiliate as transferred basis property (within the meaning of section 7701(a)(43)) and a purpose of such transaction is to reduce the gain (or increase the loss) recognized on the deemed sale of such target affiliate's stock, the gain or loss recognized under this paragraph (c) is determined as if such asset had not been contributed or transferred.

(8) *Examples.* This paragraph (c) may be illustrated by the following examples:

Example 1. (a) P makes a qualified stock purchase of T and makes a section 338 election for T. T's sole asset, all of the T1 stock, has a basis of $50 and a fair market value of $150. T's deemed purchase of the T1 stock results in a qualified stock purchase of T1 and a section 338 election is made for T1. T1's assets have a basis of $50 and a fair market value of $150.

(b) T realizes $100 of gain on the deemed sale of the T1 stock, but the gain is not recognized because T directly owns stock in T1 satisfying the requirements of section 1504(a)(2) and a section 338 election is made for T1.

(c) T1 recognizes gain of $100 on the deemed sale of its assets.

Example 2. The facts are the same as in *Example 1*, except that P does not make a section 338 election for T1. Because a section 338 election is not made for T1, the $100 gain realized by T on the deemed sale of the T1 stock is recognized.

Example 3. (a) P makes a qualified stock purchase of T and makes a section 338 election for T. T owns all of the stock of T1 and T2. T's deemed purchase of the T1 and T2 stock results in a qualified stock purchase of T1 and T2 and a section 338 election is made for T1 and T2. T1 and T2 each own 50 percent of the vote and value of T3 stock. The deemed purchases by T1 and T2 of the T3 stock result in a qualified stock purchase of T3 and a section 338 election is made for T3. T is the common parent of a consolidated group and all of the deemed sales are reported on the T group's final consolidated return. *See* § 1.338–1(e)(1).

(b) Because T, T1, T2 and T3 are members of a consolidated group filing a final consolidated return, no gain or loss is recognized by T, T1 or T2 on their respective deemed sales of target affiliate stock.

Example 4. (a) T's sole asset, all of the FT1 stock, has a basis of $25 and a fair market value of $150. FT1's sole asset, all of the FT2 stock, has a basis of $75 and a fair market value of $150. FT1 and FT2 each have $50 of accumulated earnings and profits for purposes of section 1248 (c) and (d). FT2's assets have a basis of $125 and a fair market value of $150, and their sale would not generate subpart F income under section 951. The sale of the FT2 stock or assets would not generate income effectively connected with the conduct of a trade or business within the United States. FT1 does not have an election in effect under section 953(d) and neither FT1 nor FT2 is a passive foreign investment company.

(b) P makes a qualified stock purcahse of T and makes a section 338 eledction for T. T's deemed purchase of the FT1 stock results in a qualified stock purchase of FT1 and a section 338 election is made for FT1. Similarly, FT!'s deemed purcahse of the FT2 stock results in a qualified stock purchase of FT and a section 338 election is made for FT2.

(c) T recognizes $125 of gain on the deemed sale of the FT1 stock under paragraph (c)(3) of this section. FT1's $75 of gain on the deemed sale of the FT2 stock is not recognized under paragraph (c)(2) of this section. FT2 recognizes $25 of gain on the deemed sale of its assets. The $125 gain T recognizes on the deemed sale of the FT1 stock is included in T's income as a dividend under section 1248, because FT1 and FT2 have sufficient earnings and profits for full recharacterization ($50 of accumulated earnings and profits in FT1, $50 of accumulated earnings and profits in FT2, and $25 of deemed sale earnings and profits in FT2). § 1.338–5(b). For purposes of sections 901 through 908, the source anf foreign tax credit limitation basket of $25 of the recharacterized gain on the deemed sale of the FT1 stock is determined under section 338(h)(16).

(d) *Determination of ADSP*—(1) *General rule.* The ADSP is the aggregate of the fair market values of all of old target's assets at the close of the acquisition date. Section 338(a)(1). Except as provided in section 7701(g) (relating to fair market value in the case of nonrecourse indebtedness), for assets other than Class IV assets (*i.e.*, goodwill and going concern value), the same fair market values are used for purposes of this paragraph (d) and for purposes of §§ 1.338(b)–2T (b) and (c)(1) or (c)(3) (allocating new target's adjusted grossed-up basis to its assets). If the elective ADSP formula is not used, a proper appraisal of Class IV assets is considered evidence of their fair market value. See § 1.338(b)–3T(h) for adjustments to ADSP because of events occurring after the acquisition date and § 1.338(h)(10)–1(f) for the determination of modified ADSP.

(2) *Determination of ADSP under the elective ADSP formula*—(i) *Introduction.* The ADSP under the elective ADSP formula is the sum of—

(A) The grossed-up basis of the purchasing corporation's recently purchased target stock (as defined in section 338(b)(6)(A)),

(B) The liabilities of target (including any tax liability resulting from the deemed sale), and

(C) Other relevant items.

If target is acquired in a true bargain purchase (*i.e.*, if the cost of the stock acquisition to the purchasing corporation is less than the aggregate net fair market value of the assets of target), the ADSP as determined under the elective ADSP formula, which takes into account the actual price paid by the purchasing corporation for target stock, reflects that bargain element.

(ii) *Grossed-up basis of the purchasing corporation's recently purchased target stock.* The grossed-up basis of the purchasing corporation's recently purchased target stock is an amount equal to be purchasing corporation's basis in recently purchased target stock, divided by the percentage of target stock (by value) attributable to that recently purchased target stock. If target has a single class of outstanding stock, the grossed-up basis of the purchasing corporation's recently purchased target stock reflects the total price the purchasing corporation would have paid for all outstanding target stock had it purchased all stock stock for a price per share equal to the average price per share that it paid for the recently purchased target stock.

(iii) *Tax liability resulting from deemed sale.* The elective ADSP formula takes into account both tax credit recapture liability arising by reason of the deemed sale and the tax liability of deemed sale gain. The elective ADSP formula reflects the fact that deemed sale gain (loss) both increase (decreases) the ADSP by creating (reducing) a tax liability and is computed by reference to the ADSP.

(iv) *Calculation of deemed sale gain and loss.* Deemed sale gain and loss on each asset is computed by reference to the ADSP. Thus, the determination of the tax liability resulting from the deemed sale and therefore the determination of the ADSP may require a large number of trial and error computations.

(v) *Other rules apply in elective ADSP formula.* The elective ADSP formula may not be applied in such a way as to contravene other applicable rules. Thus, for example, a capital loss cannot be applied in the elective ADSP formula to reduce ordinary income.

(3) *Sample elective ADSP formula.* (i) The sample formula is as follows:

$$ADSP = G + L + t_R \times [(ADSP \times F) - B]$$

(ii) For purposes of this sample formula—

(A) "G" is the grossed-up basis of the purchasing corporation's recently purchased target stock.

(B) "L" is the sum of target's liabilities other than target's tax liability for deemed sale gain amounts determined by reference to the ADSP. (Tax credit recapture that results from the deemed sale of target's assets is included in L, for example, because that liability is not determined by reference to the ADSP.)

(C) "t_R" is the tax rate applicable to the deemed sale gain item.

(D) "F" is a fraction the numerator of which is the fair market value of a target asset on target's acquisition date and the denominator of which is the aggregate fair market value of all target assets on target's acquisition date. This fraction is multiplied by the ADSP to arrive at the allocable ADSP amount for a target asset.

(E) "B" is the adjusted basis of a target asset on the acquisition date.

(4) *Procedure for electing elective ADSP formula and for revoking election.* The election to apply the elective ADSP formula ("formula election") is made by attaching to the final return of old target (including an amended final return) a statement containing the following declaration (or a substantially similar declaration): "THIS RETURN REFLECTS A FORMULA ELECTION FOR TARGET UNDER SECTION 338 AND § 1.338–3 (d)." The formula election is revoked by attaching to an amended final return of old target a statement containing the following declaration (or a substantially similar declaration): "THIS RETURN DOES NOT REFLECT A FORMULA ELECTION FOR TARGET UNDER SECTION 338 AND § 1.338–3 (d)." In addition, a formula election may be made or revoked in connection with the examination of the final return of old target. A formula election made for target also applies to all target affiliates acquired by the purchasing corporation with the same acquisition date as target, as does the revocation of a formula election for target. A formula election may not be made or revoked if the period within which to make an assessment of tax has expired for any return that would be affected by the election or the revocation. For this purpose, a return would be affected by the election (or revocation) if the election (or revocation) would have the effect, directly or indirectly, of increasing the tax liability reported in that return.

(5) *Examples.* (i) For purposes of the examples in this paragraph (d) (5), unless otherwise stated, T is a calendar year taxpayer that files separate returns and that has no loss or tax credit carryovers to 1992. Depreciation for 1992 is not taken into account. T has no liabilities other than a tax liability resulting from the deemed sale of assets. T's marginal tax rate for any ordinary income or net capital gain resulting from the deemed sale of assets is 34 percent. On July 1, 1992, P purchases all of the stock of T and makes a section 338 election for T.

(ii) *Examples 1* through *3* assume that T has only Class III assets (*e.g.*, property other than certain cash items, certain securities, and goodwill, etc.). *Examples 4* through *8* illustrate the effect on the elective ADSP formula of Class I, II, or IV assets. *Example 9* illustrates the elective ADSP formula when T owns all of the T1 stock. In the absence of a subscript, "ADSP" refers to ADSP for Class III assets only.

(iii) This paragraph (d) may be illustrated by the following examples:

Example 1. (a) As of July 1, 1992, T's only asset is an item of section 1245 property with an adjusted basis to T of $50,400, a recomputed basis of $80,000, and a fair market value of $100,000. P purchases all of the T stock for $75,000.

(b) The elective ADSP formula as applied to these facts is as follows:

$ADSP = G + L + t_R \times (ADSP - B)$
ADSP = ($75,000/1) + $0 + .34 × (ADSP − $50,400)
ADSP = $75,000 × .34ADSP − $17,136
ADSP = $57,864 + .34ADSP
ADSP − .34ADSP = $57,864
.66ADSP = $57,864
.66ADSP/.66 = $57,864/.66
ADSP = $87,672.72

(c) Because the ADSP for T ($87,672.72) does not exceed the fair market value of T's one asset ($100,000), a Class III asset, T's entire ADSP is allocated to that asset. See § 1.338 (b)–2T (c)(1) (relating to fair market value limitation).

(d) Thus, T has deemed sale gain of $37,272.72 (consisting of $29,600 of ordinary income and $7,672.72 of capital gain) and a resulting tax liability of $12,672.72.

Example 2. (a) Assume the same facts as in *Example 1*, except that on July 1, 1992, P purchases only 80 of the 100 shares of T stock for $60,000.

(b) The elective ADSP formula as applied to these facts is as follows:

$ASDP = G + L + t_R \times (ADSP - B)$
ADSP = ($60,000/.8) + $0 + .34 − (ADSP − 50,400)
ADSP=$75,000+.34ADSP-$17,136

The remainder of the calculation and the result are the same as in *Example 1.*

Example 3. (a) On July 1, 1992, P purchases 80 of the 100 shares of T stock for $100,000. T's assets are as follows:

Assets	Basis	FMV	"F"
1. Land	$5,000	$35,000	14
2. Inventory (FIFO)	10,000	50,000	.20
3 Equipment A (recomputed basis $80,000)	5,000	90,000	.36
4. Equipment B (recomputed basis $20,000)	10,000	75,000	.30
Totals	30,000	250,000	1.00

T has liabilities (not including the tax liability for deemed sale gain on its assets) of $50,000.

(b) The elective ADSP formula as applied to these facts is as follows (the subscript numerals in the formula correspond to the number assigned each asset in the above table):

$ADSP = G + L + t_R X [(ADSP X (F_1 + (F_2 + F_3 + F_4)) - (B_1 + B_2 + B_3 + B_4)]$
ADSP = $100,000/.8 + $50,000 + .34 X [(ADSP X (.14 + .20 + .36 + .30)) − ($5,000 + $10,000 + $5,000 + $10,000)]
ADSP = $125,000 + $50,000 + .34 X (ADSP − $30,000)
ADSP = $175,000 + .34ADSP − $10.200
ADSP = $164,800 + .34ADSP
ADSP − .34ADSP = $164,800
.66ADSP = $164,800
.66ADSP/.66 = $164,800/.66
ADSP = $249,696.97

(c) Because the ADSP for T ($249,696.97) does not exceed the sum of the fair market values of all of T's assets ($250,000), and those assets are all Class III assets, T's entire ADSP is allocated to those assets. *See* § 1.338 (b)–2T (c) (1) (relating to fair market value limitation).

(d) The following table breaks the ADSP of $249,696.97 down to the deemed sale price, ordinary income, capital gain, and resulting tax allocable to each asset:

Asset	ADSP	Gain	Tax
1 Land	$34,957.58	$29,957.58 (capital gain).	$10,185.58
2. Inventory.	49,939.39	39,939.39 (ordinary income)	13,579.39
3. Equipment A.	89,890.91	84,890.91 (75,000 ordinary income 9,890.91 capital gain)	28,862.91
4. Equipment B.	74,909.09	64,909.09 (10,000 ordinary income 54,909.09 capital gain)	22,069.09
Totals	249,696.97	219,696.97	74,696.97

SUMMARY OF CALCULATION

1. Grossed-up basis of P's recently purchased T stock	$125,000.00
2. Liabilities (except taxes measured by reference to ADSP)	50,000.00
3. Tax on deemed sale gain	74,696.97
4. ADSP	249,696.97

Example 4. (a) Assume the same facts as in *Example 1*, except that P purchases all of the T stock for $85,000 and that T has $10,000 of cash, a Class I asset.

(b) The sample elective ADSP formula as applied to these facts is modified by referring to the amount of the Class I assets as "I". This modified formula is as follows:

$ADSP = G - I + L + t_R X (ADSP - B)$
ADSP = ($85,000/1) − $10,000 + $0 + .34 X (ADSP − $50,400)
ADSP = $75,000 + .34ADSP - $17,136

The remainder of the calculation and result are the same as in *Example 1.*

Example 5. (a) Assume the same facts as in *Example 2*, except that P purchases the 80 shares of T stock for $68,000 and T holds marketable securities, a Class II asset, it acquired 10 years ago having a fair market value of $10,000 and a basis of $4,000.

(b) The sample elective ADSP formula as applied to these facts is modified by referring to the fair market value of the Class II asset as "II" and the basis of that asset as "B_{II}." This modified formula for calculating the ADSP for the item of section 1245 property is as follows:

$ADSP = G - II + L + t_R X [(ADSP - B) + (II - B_{II})]$
ADSP = ($68,000/.8) − $10,000 + 0 + .34 X [(ADSP − $50,400) + ($10,000 − $4,000)]
ADSP = $85,000 − $10,000 + .34 X (ADSP − $50,400) + .34 X ($6,000)
ADSP = $75,000 + .34ADSP − $17,136 + $2,040
ADSP − .34ADSP = $59,904
.66ADSP/.66 − $59,904/.66
ADSP = $90,763.64

(c) Because the ADSP for T's Class III asset ($90,763.64) does not exceed its fair market value, T's entire ADSP for its Class III assets is allocated to its one asset in the class. See §§ 1.338 (b)–2T (b) and (c) (1). The deemed selling price for the marketable securities (Class II assets) is their fair market value ($10,000).

(d) Thus, T has deemed sale gain of $46,363.64 (consisting of $29,600 of ordinary income and $16,763.64 of capital gain).

SUMMARY OF CALCULATION

1. Grossed-up basis of P's recently purchased T stock	$85,000.00
2. Less: Deemed selling price of Class II assets	10,000.00
3. Tax on deemed sale gain	15,763.64
4. ADSP for Class III property	90,763.64

Example 6. Assume the same facts as in *Example 1*, except that T has goodwill with an appraised value of $10,000. The result is the same as in *Example 1* when the elective ADSP formula is used. The appraised value of goodwill is not taken into account under the ADSP formula, and, so long as the ADSP for T's Class II asset does not exceed its fair market value, goodwill does not arise under the formula.

Example 7. (a) Assume the same facts as in *Example 1*, except that T has goodwill with an appraised value of $10,000 and that P purchases all of the T stock for $100,000.

(b) The elective ADSP formula as applied to these facts is as follows:

$ADSP = G + L + t_R X (ADSP - B)$
ADSP = ($100,000/1) + $0 + .34 X (ADSP − $50,400)
ADSP = $100,000 + .34ADSP − $17,136
ADSP = $82,864 + .34ADSP
ADSP − .34ADSP = $82,864
.66ADSP/.66 = $82,864/.66
ADSP = $125,551.52

(c) Under the initial application of the elective ADSP formula, the ADSP of T would be $125,551.52. Because this ADSP exceeds

the fair market value of T's Class III asset ($100,000) and ADSP allocated to that asset is limited to the asset's fair market value under § 1.338 (b)–2T (c) (1), the elective ADSP formula must be applied to compute the ADSP for T's Class IV property (*e.g.*, goodwill).

(d) For T's Class IV assets, the sample ADSP formula is modified by using III to refer to the fair market value of T's Class III asset (*i.e.*, the section 1245 property) and $ADSP_{IV}$ to refer to the ADSP for Class IV property. This modified formula is as follows:

$ADSP_{IV} = G - III + L + t_R X [(III - B_{III}) + (ADSP_{IV} - B_{IV})]$
$ADSP_{IV} = \$100,000 - \$100,000 + \$0 + .34 X [(\$100 000 - \$50,400) + (ADSP_{IV} - \$0)]$
$ADSP_{IV} = .34 X (\$49,600 + ADSP_{IV})$
$ADSP_{IV} = \$16,864 + .34ADSP_{IV}$
$ADSP_{IV} = .34ADSP_{IV} = \$16,864$
$.66ADSP_{IV}/.66 = \$16,864/.66$
$ADSP_{IV} = \$25,551.52$

(e) The ADSP for the Class IV property is $25,551.52. Note that the appraised value of the goodwill is irrelevant.

(f) Thus, T has deemed sale gain of $75,151.52 (consisting of $29,600 of ordinary income and $45,551.52 of capital gain).

SUMMARY OF CALCULATION

1. Grossed-up basis of P's recently purchased stock	$100,000
2. Less: Deemed selling price of Class III property	100,000
3. Tax on deemed sale gain	25,551.52
4. ADSP for Class IV property	25,551.52

Example 8. (a) On July 1, 1992, P purchases 80 of the 100 shares of T stock for $96,000. As of July 1, 1992, T's assets, all of which have been held for more than one year, are as follows:

	Class	Basis	FM
1. Cash	I	$10,000	
2. Marketable security	II	4,000	$10,000
3. Section 1245 property (recomputed basis $210,000).	III	50,400	100,000
4. Goodwill	IV	3,000	15,000

(b) The elective ADSP formula as applied to these facts is modified by referring to items for a class of property by using Roman subscripts. (Since there is only one asset in each class, subscripts as used in *Example 3* are not necessary. (The modified formula is as follows:

$ADSP = G - I - II + L + t_R \times [(ADSP - B_{III}) + (II - B_{II})]$
$ADSP = [\$96,000/.8) - \$10,000 - \$10,000 + 0 + .34 \times [(ADSP - \$50,400) + (\$10,000 - \$4,000)]$
$ADSP = \$120,000 - \$20,000 + .34 \times (ADSP - \$50,400) + .34 \times [\$6,000]$
$ADSP = \$100,000 + .34ADSP - \$17,136 + \$2,040$
$ADSP = \$84,904 + .34ADSP$
$ADSP - .34ADSP = \$84,904$
$.66ADSP/.66 = \$84,904/.66$
$ADSP = \$128,642.42$

(c) Under the initial application of the modified elective ADSP formula, the ADSP of T would be $128,642.42. Because this ADSP exceeds the fair market value of T's one Class III asset ($100,000) and ADSP allocated to that asset cannot exceed $100,000 under § 1.338 (b) –2T (c) (1), the elective ADSP formula must be applied to compute the ADSP for T's Class IV property (*e.g.*, goodwill).

(d) For T's Class IV assets, the modified ADSP formula is further modified in the manner shown in *Example 7.* This further modified formula is as follows:

$ADSP_{IV} = G - I - II - III + L + t_R \times [(III - B_{III}) + (II - B_{II} + (ASDP_{IV} - B_{IV})]$
$ADSP_{IV} = \$120,000 - \$10,000 - \$10,000 - \$100,000 + 0 + .34 \times [(\$100,000 - \$50,400) + (\$10,000 - \$4,000) + (ADSP_{IV} - \$3,000)]$
$ADSP_{IV} = 34 \times \$49,600 + .34 \times \$6,000 + .34ADSP_{IV} - .34 \times \$3,000$
$ADSP_{IV} = \$16,864 + \$2,040 + .34ADSP_{IV} - \$1,020$
$ADSP_{IV} - .34ADSP_{IV} = \$17,884$
$.66ADSP_{IV}/.66 = \$17,884/.66$
$ADSP_{IV} = \$28,642.42$

(e) Thus, the ADSP for the Class IV property is $28,642.42. Note that the appraised value for the goodwill is irrelevant.

(f) Thus, T has deemed sale gain of $81,242.42 (consisting of $49,600 of ordinary income and $31,642.42 of capital gain).

SUMMARY OF CALCULATION

1. Grossed-up basis of P's recently purchased stock	$120,000.00
2. Less: deemed selling price of:	
a. Class I property	10,000.00
b. Class II property	10,000.00
c. Class III property	100,000.00
d. Total	120,000.00
3. Tax on deemed sale gain	28,642.42
4. ADSP for Class IV property	28,642.42

Example 9. (a) Assume the same facts as in *Example 3*, except that Asset No. 2 is all of the T1 stock rather than inventory. As of July 1, 1992, T1's only asset, which T1 has held for more than one year, is an item of property with an adjusted basis to T1 of $18,000 and a fair market value of $75,000. Assume a section 338 election is made for T1. Assume that T1 has no liabilities other than a tax liability resulting from the deemed sale gain.

(b) Under paragraph (c)(2) of this section, T does not recognize any gain on the deemed sale of the T1 stock. The elective ADSP formula of T under these facts is as follows:

$ADSP = G + L + t_R \times [(ADSP \times (F_1 - F_3F_4)) - (B_1 + B_3 + B_4)]$
$ADSP = \$100,000/.8 + \$50,000 + .34 \times [(ADSP \times (.14 + .36 + .30)) - (\$5,000 + \$5,000 + \$10,000)]$
$ADSP = \$125,000 + \$50,000 + .34 \times (.80ADSP - \$20,000)$
$ADSP = \$175,000 + .272ADSP - \$6,800$
$ADSP = \$168,200 + .272ADSP$
$ADSP = .272ADSP = \$168,200$
$.728ADSP = \$168,200$
$.728ADSP/.728 = \$168,200/.728$
$ADSP = \$231,043.96$

(c) Because the ADSP for T ($231,043.96) does not exceed the sum of the fair market values of all of T's assets ($250,000), and those assets are all Class III assets, T's entire ADSP is allocated to those assets. *See* § 1.338(b)–2T(c)(1) (relating to fair market value limitation). The following table breaks the ADSP of $231,043.96 down to the deemed sale price, ordinary income, capital gain, and resulting tax allocable to each asset:

Asset	ADSP	Gain	Tax
1. Land	$32,346.15	$27,346.15 (capital gain).	$9,297.69
2. T1 stock	46,208.79	36,208.79	0
3. Equipment A.	83,175.82	78,175.82 (75,000 ordinary income 3,175.78 capital gain)	26,579 78
4. Equipment B.	69,313.19	59,313.19 (10,000 ordinary income 49,313.19 capital gain)	20.166.48
Totals	231,043.96	201,043.96	56,043.95

SUMMARY OF CALCULATION

1. Grossed-up basis of P's recently purchased T stock	$125,000.00
2. Liabilities (except taxes measured by reference to ADSP)	50,000.00
3. Tax on deemed sale gain	56,043.95
4. ADSP	231,043.96

(d) For purposes of applying the elective ADSP formula to T1, T's basis in recently purchased T1 stock is equal to the allocable ADSP amount for the T1 stock ($46,208.79). Thus, the elective ADSP formula as applied to T1 is as follows:

$ADSP = G + L + t_R \times (ADSP - B)$
$ADSP = \$46,208.79/1 + \$0 + .34 \times (ADSP - \$18,000)$
$ADSP = \$46,208.79 + .34ADSP - \$6,120$
$ADSP = \$40,088.79 + .34ADSP$
$ADSP - .34ADSP = \$40,088.79$
$.66ADSP/.66 = \$40,088.79/.66$
$ADSP = \$60,740.59$

(e) Because the ADSP for T1 ($60,740.59) does not exceed the fair market value of T1's only asset ($75,000), T1's entire ADSP is allocated to that asset.

(f) Thus, T1 has deemed sale gain of $42,740.59 (which is all capital gain) and a resulting tax liability of $14,531.80.

§ 1.338–4 Asset and stock consistency.

(a) *Introduction*—(1) *Overview.* This section implements the consistency rules of sections 338 (e) and (f). Under this section, no election under section 338 is deemed made or required with respect to target or any target affiliate

Instead, the person acquiring an asset may have a carryover basis in the asset.

(2) *General application.* The consistency rules generally apply if the purchasing corporation acquires an asset directly from target during the target consistency period and target is a subsidiary in a consolidated group. In such a case, gain from the sale of the asset is reflected under the investment adjustment provisions of the consolidated return regulations in the basis of target stock and may reduce gain from the sale of the stock. Under the consistency rules, the purchasing corporation generally takes a carryover basis in the asset, unless a section 338 election is made for target. Similar rules apply if the purchasing corporation acquires an asset directly from a lower-tier target affiliate if gain from the sale is reflected under the investment adjustment provisions in the basis of target stock.

(3) *Extensions of the general rules.* If an arrangement exists, paragraph (f) of this section generally extends the carryover basis rule to certain cases in which the purchasing corporation acquires assets indirectly from target (or a lower-tier target affiliate). To prevent avoidance of the consistency rules, paragraph (j) of this section also may extend the consistency period or the 12-month acquisition period and may disregard the presence of conduits.

(4) *Application where certain dividends are paid.* Paragraph (g) of this section extends the carryover basis rule to certain cases in which dividends are paid to a corporation that is not a member of the same consolidated group as the distributing corporation. Generally, this rule applies where a 100 percent dividends received deduction is used in conjunction with asset dispositions to achieve an effect similar to that available under the investment adjustment provisions of the consolidated return regulations.

(5) *Application to foreign target affiliates.* Paragraph (h) of this section extends the carryover basis rule to certain cases involving target affiliates that are controlled foreign corporations.

(6) *Stock consistency.* This section limits the application of the stock consistency rules to cases in which the rules are necessary to prevent avoidance of the asset consistency rules. Following the general treatment of a section 338(h)(10) election, a sale of a corporation's stock is treated as a sale of the corporation's assets if a section 338 (h)(10) election is made. Because gain from this asset sale may be reflected in the basis of the stock of a higher-tier target, the carryover basis rule may apply to the assets.

(b) *Consistency for direct acquisitions*—(1) *General rule.* The basis rules of paragraph (d) of this section apply to an asset if—

(i) The asset is disposed of during the target consistency period,

(ii) The basis of target stock, as of the target acquisition date, reflects gain from the disposition of the asset (see paragraph (c) of this section), and

(iii) The asset is owned, immediately after its acquisition and on the target acquisition date, by a corporation that acquires stock of target in the qualified stock purchase (or by an affiliate of an acquiring corporation).

(2) *Section 338 (h) (10) elections.* For purposes of this section, if a section 338 (h)(10) election is made for a corporation acquired in a qualified stock purchase—

(i) The acquisition is treated as an acquisition of the corporation's assets (see § 1.338(h)(10–1), and

(ii) The corporation is not treated as target.

(c) *Gain from disposition reflected in basis of target stock.* For purposes of this section:

(1) *General rule.* Gain from the disposition of an asset is reflected in the basis of target stock if the gain is taken into account under § 1.1502–32, directly or indirectly, in determining the basis of the stock, after applying section 1503(e) and other provisions of the Code and regulations.

(2) *Gain not reflected if section 338 election made for target.* Gain from the disposition of an asset that is otherwise reflected in the basis of target stock as of the target acquisition date is not considered reflected in the basis of target stock if a section 338 election is made for target.

(e) *Gain reflected by reason of distributions.* Gain from the disposition of an asset is not considered reflected in the basis of target stock merely by reason of the receipt of a distribution from a target affiliate that is not a member of the same consolidated group as the distributee. See paragraph (g) of this section for the treatment of dividends to which section 243(a)(3) applies.

(4) *Controlled foreign corporations.* For a limitation applicable to gain of a target affiliate that is a controlled foreign corporation, see paragraph (h)(2) of this section.

(5) *Gain recognized outside the consolidated group.* Gain from the disposition of an asset by a person other than target or a target affiliate is not reflected in the basis of target stock unless the person is a conduit, as defined in paragraph (j)(4) of this section.

(d) *Basis of acquired assets*—(1) *Carryover basis rule.* If this paragraph (d) applies to an asset, the asset's basis immediately after its acquisition is, for all purposes of the Code, its adjusted basis immediately before its disposition.

(2) *Exceptions to carryover basis rule for certain assets.* The carryover basis rule of paragraph (d)(1) of this section does not apply to the following assets—

(i) Any asset disposed of in the ordinary course of a trade or business (see section 338(e)(2)(A)),

(ii) Any asset the basis of which is determined wholly by reference to the adjusted basis of the asset in the hands of the person that disposed of the asset (see section 338(e)(2)(B)),

(iii) Any debt or equity instrument issued by target or a target affiliate (see paragraph (h)(3) of this section for an exception relating to stock of a target affiliate that is a controlled foreign corporation),

(iv) Any asset the basis of which immediately after its acquisition would otherwise be less than its adjusted basis immediately before its disposition, and

(v) Any asset identified by the Internal Revenue Service in a revenue ruling or revenue procedure.

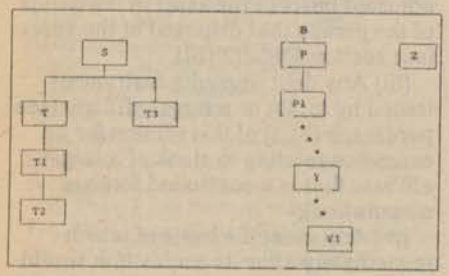
(3) *Exception to carryover basis rule for de minimis assets.* The carryover basis rules of this section do not apply to an asset if the asset is not disposed of as part of the same arrangement as the acquisition of target and the aggregate amount realized for all assets otherwise subject to the carryover basis rules of this section does not exceed $250,000.

(4) *Mitigation rule*—(i) *General rule.* If the carryover basis rules of this section apply to an asset and the asset is transferred to a domestic corporation in a transaction to which section 351 applies or as a contribution to capital and no gain is recognized, the transferor's basis in the stock of the transferee (but not the transferee's basis in the asset) is determined without taking into account the carryover basis rules of this section.

(ii) *Time for transfer.* This paragraph (d)(4) applies only if the asset is transferred before the due date (including extensions) for the transferor's income tax return for the year that includes the last date for which a section 338 election may be made for target.

(e) *Examples*—(1) *In general.* For purposes of the examples in this section, unless otherwise stated, the basis of each asset is the same for determining earnings and profits and taxable income, the exceptions to paragraph (d)(1) of this section do not apply, the taxable year of all persons is the

calendar year, and the following facts apply: S is the common parent of a consolidated group that includes T, T1, T2, and T3: S owns all of the stock of T and T3; and T owns all of the stock of T1, which owns all of the stock of T2. B is unrelated to the S group and owns all of the stock of P, which owns all of the stock of P1. Y and Y1 are partnerships that are unrelated to the S group but may be related to the P group. Z is a corporation that is not related to any of the other parties.



(2) *Direct acquisitions.* Paragraphs (b), (c), and (d) of this section may be illustrated by the following examples:

Example 1. Asset acquired from target by purchasing corporation. (a) On February 1, 1992, T sells an asset to P1 and recognizes gain. T's gain from the disposition of the asset is taken into account under § 1.1502–32 in determining S's basis in the T stock. On January 1, 1993, P1 makes a qualified stock purchase of T from S. No section 338 election is made for T.

(b) T disposed of the asset during its consistency period, gain from the asset disposition is reflected in the basis of the T stock as of T's acquisition date (January 1 1993), and the asset is owned both immediately after the asset disposition (February 1, 1992) and on T's acquisition date by P1, the corporation that acquired T stock in the qualified stock purchase. Consequently, under paragraph (b) of this section, paragraph (d)(1) of this section applies to the asset and P1's basis in the asset is T's adjusted basis in the asset immediately before the sale to P1.

Example 2. Gain from section 338(h)(10) election reflected in stock basis. (a) On February 1, 1992, P1 makes a qualified stock purchase of T2 and T1. A section 338(h)(10) election is made for T2 and T2 recognizes gain on each of its assets. T2's gain is taken into account under § 1.502–32 in determining S's basis in the T stock. On January 1, 1993, P1 makes a qualified stock purchase of T from S. No section 338 election is made for T.

(b) Under paragraph (b)(2) of this section, the acquisition of the T2 stock is treated as an acquisition of T2's assets on February 1, 1992, because a section 338(h)(10) election is made for T2. The gain recognized by T2 under section 338(h)(10) is reflected in S's basis in the T stock as of T's acquisition date. Because the other requirements of paragraph (b) of this section are satisfied, paragraph (d)(1) of this section applies to the assets and new T2's basis in its assets is old T2's adjusted basis in the assets immediately before the disposition.

Example 3. Corporation owning asset ceases affiliation with corporation purchasing target before target acquisition date. (a) On February 1, 1992, T sells an asset to P1 and recognizes gain. On December 1, 1992, P disposes of all of the P1 stock while P1 still owns the asset. On January 1, 1993, P makes a qualified stock purchase of T from S. No section 338 election is made for T.

(b) Immediately after T's disposition of the asset, the asset is owned by P1 which is affiliated on that date with P, the corporation that acorporation (P1) that is no longer affiliated with P on T's acquisition date. Although the other requirements of paragraph (b) of this section are satisfied, the requirements of paragraph (b)(1)(iii) of this section are not satisfied. Consequently, the basis rules of paragraph (d) of this section do not apply to the asset by reason of P1's acquisition.

(c) If P acquires all of the Z stock and P1 transfers the asset to Z on or before T's acquisition date (January 1, 1993), the asset is owned by an affilitate of P both on February 1, 1992 (P1) and on January 1, 1993 (Z). Consequently, all of the requirements of paragraph (b) of this section are satisfied and paragraph (d)(1) of this section applies to the asset and P1's basis in the asset is T's adjusted basis in the asset immediately before the sale to P1.

Example 4. Gain reflected in stock basis notwithstanding offsetting loss or distribution. (a) On April 1, 1992, T sells an asset to P1 and recognizes gain. In 1992, T distributes an amount equal to the gain. On March 1, 1993, P makes a qualified stock purchase of T from S. No section 338 election is made for T.

(b) Although, as a result of the distribution, there is no adjustment with respect to the T stock under § 1.1502–32 for 1992, T's gain from the disposition of the asset is considered reflected in S's basis in the T stock. The gain is considered to have been taken into account under § 1.1502–32 in determining the adjustments to S's basis in the T stock because S's basis in the T stock is different from what it would have been had there been no pain.

(c) If T distributes an amount equal to the gain on February 1, 1993, rather than in 1992, the results would be the same because S's basis in the T stock is different from what it would have been had there been no gain. If the distribution in 1993 is by reason of an election under § 1.1502–32(f)(2), the results would be the same.

(d) If, in 1992, T does not make a distribution and the S group does not file a consolidated return, but, in 1993, the S group does file a consolidated return and makes an election under § 1.1502–32(f)(2) for T, the results would be the same. S's basis in the T stock is different from what it would have been had there been no gain. Paragraph (c)(3) of this section (gain reflected by reason of distributions) does not apply to the deemed distribution under the election because S and T are members of the same consolidated group. If T distributes an amount equal to the gain in 1993 and no election is made under § 1.1502–32(f)(2), the results would be the same.

(e) If, in 1992, T incurs an unrelated loss in an amount equal to the gain, rather than distributing an amount equal to the gain, the results would be the same because S's basis in the T stock is different from what it would have been had there been no gain.

Example 5. Gain of a target affiliate reflected in stock basis after corporate reorganization. (a) On February 1, 1992, T3 sells an asset to P1 and recognizes gain. On March 1, 1992, S contributes the T3 stock to T in a transaction qualifying under section 351. On January 15, 1993, P1 makes a qualified stock purchase of T from S. No section 338 election is made for T.

(b) T3's gain from the asset sale is taken into account under § 1.1502–32 in determining S's basis in the T3 stock. Under section 358, the gain that is taken into account under § 1.1502–32 in determining S's basis in the T3 stock is also taken into account in determining S's basis in the T stock following S's contribution of the T3 stock to T. Consequently, under paragraph (b) of this section, paragraph (d)(1) of this section applies to the asset and P1's basis in the asset is T3's adjusted basis in the asset immediately before the sale to P1.

(c) If on March 1, 1992, rather than S contributing the T3 stock to T, S causes T3 to merge into T in a transaction qualifying under section 368(a)(1)(D), the results would be the same.

Example 6. Gain not reflected if election under section 338 made. (a) On February 1, 1992, T1 sells an asset to P1 and recognizes gain. On January 1, 1993, P1 makes a qualified stock purchase of T1 from T. A section 338 election is made for T1.

(b) Under paragraph (c)(2) of this section, because a section 338 election is made for T1, T's basis in the T1 stock is considered not to reflect gain from the disposition. Consequently, the requirement of paragraph (b)(1)(ii) of this section is not satisfied. Thus, P1's basis in the asset is not determined under paragraph (d) of this section. Although the section 338 election for T1 results in a qualified stock purchase of T2, the requirement of paragraph (b)(1)(ii) of this section is not satisfied with respect to T2, whether or not a section 338 election is made for T2.

(c) If, on January 1, 1993, P1 makes a qualified stock purchase of T and S and a section 338 election for T, rather than T1, S's basis in the T stock is considered not to reflect gain from T1's disposition of the asset. However, the section 338 election for T results in a qualified stock purchase of T1 Because the gain is reflected in T's basis in the T1 stock, the requirements of paragraph (b) of this section are satisfied. Consequently, P1's basis in the asset is determined under paragraph (d)(1) of this section unless a section 338 election is also made for T1.

(f) *Extension of consistency to indirect acquisitions*—(1) *Introduction.* If an arrangement exists (*see* paragraph (j)(5) of this section), this paragraph (f)

generally extends the consistency rules to indirect acquisitions that have the same effect as direct acquisitions. For example, this paragraph (f) applies if, pursuant to an arrangement, target sells an asset to an unrelated person who then sells the asset to the purchasing corporation.

(2) *General rule.* This paragraph (f) applies to an asset if, pursuant to an arrangement—

(i) The asset is disposed of during the target consistency period,

(ii) The basis of target stock as of, or at any time before, the target acquisition date reflects gain from the disposition of the asset, and

(iii) The asset ownership requirements of paragraph (b)(1)(iii) of this section are not satisfied, but the asset is owned, at any time during the portion of the target consistency period following the target acquisition date, by—

(A) A corporation—(*1*) The basis of whose stock, as of, or at any time before, the target acquisition date, reflects gain from the disposition of the asset, and

(*2*) That is affiliated, at any time during the target consistency period, with a corporation that acquires stock of target in the qualified stock purchase, or

(B) A corporation that at the time it owns the asset is affiliated with a corporation described in paragraph (f)(2)(iii)(A) of this section.

(3) *Basis of acquired assets.* If this paragraph (f) applies to an asset, the principles of the basis rules of paragraph (d) of this section apply to the asset as of the date, following the disposition with respect to which gain is reflected in the basis of target's stock, that the asset is first owned by a corporation described in paragraph (f)(2)(iii) of this section. If the principles of the carryover basis rule of paragraph (d)(1) of this section apply to an asset, the asset's basis also is reduced (but not below zero) by the amount of any reduction in its basis occurring after the disposition with respect to which gain is reflected in the basis of target's stock.

(4) *Examples.* This paragraph (f) may be illustrated by the following examples:

Example 1. Acquisition of asset from unrelated party by purchasing corporation. (a) On February 1, 1992, T sells an asset to Z and recognizes gain. On February 15, 1992, P1 makes a qualified stock purchase of T from S. No section 338 election is made for T. P1 buys the asset from Z on March 1, 1992, before Z has reduced the basis of the asset through depreciation or otherwise.

(b) Paragraph (b) of this section does not apply to the asset because the asset ownership requirements of paragraph (b)(1)(iii) of this section are not satisfied. However, the asset ownership requirements of paragraph (f)(2)(iii) of this section are satisfied because, during the portion of T's consistency period following T's acquisition date, the asset is owned by P1 while it is affiliated with T. Consequently, paragraph (f) of this section applies to the asset if there is an arrangement for T to dispose of the asset during T's consistency period, for the gain to be reflected in S's basis in the T stock as of T's acquisition date, and for P1 to own the asset during the portion of T's consistency period following T's acquisition date. If the arrangement exists, under paragraph (f)(3) of this section, P1's basis in the asset is determined as of March 1, 1992, under the principles of paragraph (d) of this section. Consequently, P1's basis in the asset is T's adjusted basis in the asset immediately before the sale to Z.

(c) If P1 acquires the asset from Z on January 15, 1993 (rather than on March 1, 1992), and Z's basis in the asset has been reduced through depreciation at the time of the acquisition, P1's basis in the asset as of January 15, 1993, would be T's adjusted basis in the asset immediately before the sale to Z, reduced (but not below zero) by the amount of the depreciation. Z's basis and depreciation are determined without regard to the basis rules of paragraph (d) of this section.

(d) If P, rather than P1, acquires the asset from Z, the results would be the same.

(e) If, on March 1, 1992, P1 acquires the Z stock, rather than acquiring the asset from Z, paragraph (f) of this section would apply to the asset if an arrangement exists. However, under paragraph (f)(3) of this section, Z's basis in the asset would be determined as of February 1, 1992, the date the asset is first owned by a corporation (Z) described in paragraph (f)(2)(iii) of this section. Consequently, Z's basis in the asset as of February 1, 1992, determined under the principles of paragraph (d) of this section, would be T's adjusted basis in the asset immediately before the sale to Z.

Example 2. Acquisition of asset from target by target affiliate. (a) On February 1, 1992, T contributes an asset to T1 in a transaction qualifying under section 351 and in which T recognizes gain under section 351 (b) that is deferred under § 1.1502–13. On March 1, 1992, P1 makes a qualified stock purchase of T from S and, pursuant to § 1.1502–13 (f), the deferred gain is taken into account by T immediately before T ceases to be a member of the S group. No section 338 election is made for T.

(b) Paragraph (b) of this section does not apply to the asset because the asset ownership requirements of paragraph (b)(1)(iii) of this section are not satisfied.

(c) T1 is not described in paragraph (f)(2)(iii)(A) of this section because the basis of the T1 stock does not reflect gain from the disposition of the asset. Although, under section 358(a)(1)(B)(ii), T's basis in the T1 stock is increased by the amount of the gain, the gain is not taken into account directly or indirectly under § 1.1502–32 in determining T's basis in the T1 stock.

(d) T1 is described in paragraph (f)(2)(iii)(B) of this section because, during the portion of T's consistency period following T's acquisition date, T1 owns the asset while it is affiliated with T, a corporation described in paragraph (f)(2)(iii)(A) of this section. Consequently, paragraph (f) of this section applies to the asset if there is an arrangement. Under paragraph (j)(5) of this section, the fact that, at the time T1 acquires the asset from T, T1 is related (within the meaning of section 267(b)) to T indicates that an arrangement exists.

Example 3. Acquisition of asset from target and indirect acquisition of target stock. (a) On February 1, 1992, T sells an asset to P1 and recognizes gain. On March 1, 1992, Z makes a qualified stock purchase of T from S. No section 338 election is made for T. On January 1, 1993, P1 acquires the T stock from Z other than in a qualified stock purchase.

(b) The asset ownership requirements of paragraph (b)(1)(iii) of this section are not satisfied because the asset was never owned by Z, the corporation that acquired T stock in the qualified stock purchase (or by a corporation that was affiliated with Z at the time it owned the asset). However, because the asset is owned by P1 while it is affiliated with T during the portion of T's consistency period following T's acquisition date, paragraph (f) of this section applies to the asset of there is an arrangement. If there is an arrangement, the principles of the carryover basis rule of paragraph (d)(1) of this section apply to determine P1's basis in the asset unless Z makes a section 338 election for T. See paragraph (c)(2) of this section.

(c) If P1 also makes a qualified stock purchase of T from Z, the results would be the same. If there is an arrangement, the principles of the carryover basis rule of paragraph (d)(1) of this section apply to determine P1's basis in the asset unless Z makes a section 338 election for T. However, these principles apply to determine P1's basis in the asset if P1, but not Z, makes a section 338 election for T. The basis of the T stock no longer reflects, as of T's acquisition date by P1, the gain from the disposition of the asset.

(d) Assume Z purchases the T stock other than in a qualified stock purchase and P1 makes a qualified stock purchase of T from Z. Paragraph (b) of this section does not apply to the asset because gain from the disposition of the asset is not reflected in the basis of T's stock as of T's acquisition date (January 1, 1993). However, because the gain is reflected in S's basis in the T stock before T's acquisition date and the asset is owned by P1 while it is affiliated with T during the portion of T's consistency period following T's acquisition date, paragraph (f) of this section applies to the asset if there is an arrangement. If there is an arrangement, the principles of the carryover basis rule of paragraph (d)(1) of this section apply to determine P1's basis in the asset even if P1 makes a section 338 election for T. The basis of the T stock no longer reflects, as of T's acquisition date, the gain from the disposition of the asset.

Example 4. Asset acquired from target affiliate by corporation that becomes its affiliate. (a) On February 1, 1992, T1 sells an asset to P1 and recognizes gain. On February 15, 1992, Z makes a qualified stock purchase of T from S. No section 338 election is made for T. On March 1, 1992, P1 acquires the T1

stock from T, other than in a qualified stock purchase.

(b) The asset ownership requirements of paragraph (b)(1)(iii) of this section are not satisfied because the asset was never owned by Z, the corporation that acquired T stock in the qualified stock purchase (or by a corporation that was affiliated with Z at the time it owned the asset).

(c) P1 is not described in paragraph (f)(2)(iii)(A) of this section because gain from the disposition of the asset is not reflected in the basis of the P1 stock.

(d) P1 is described in paragraph (f)(2)(iii)(B) of this section because the asset is owned by P1 while P1 is affiliated with T1 during the portion of T's consistency period following T's acquisition date. T1 becomes affiliated with Z, the corporation that acquired T stock in the qualified stock purchase, during T's consistency period, and, as of T's acquisition date, the basis of T1's stock reflects gain from the disposition of the asset. Consequently, paragraph (f) of this section applies to the asset if there is an arrangement.

Example 5. De minimis rules. (a) On February 1, 1992, T sells an asset to P and recognizes gain. On February 15, 1992, T1 sells an asset to Z and recognizes gain. The aggregate amount realized by T and T1 on their respective sales of assets is not more than $250,000. On March 1, 1992, T3 sells an asset to P and recognizes gain. On April 1, 1992, P makes a qualified stock purchase of T from S. No section 338 election is made for T. On June 1, 1992, P1 buys from Z the asset sold by T1.

(b) Under paragraph (b) of this section, the basis rules of paragraph (d) of this section apply to the asset sold by T. Under paragraph (f) of this section, the principles of the basis rules of paragraph (d) of this section apply to the asset sold by T1 if there is an arrangement. Because T3's gain is not reflected in the basis of the T stock, the basis rules of this section do not apply to the asset sold by T3.

(c) The de minimis rule of paragraph (d)(3) of this section applies to an asset if the asset is not disposed of as part of the same arrangement as the acquisition of T and the aggregate amount realized for all assets otherwise subject to the carryover basis rules does not exceed $250,000. The aggregate amount realized by T and T1 does not exceed $250,000. (The asset sold by T3 is not taken into account for purposes of the de minimis rule.) Thus, the de minimis rule applies to the asset sold by T if the asset is not disposed of as part of the same arrangement as the acquisition of T.

(d) If, under paragraph (f) of this section, the principles of the carryover basis rules of paragraph (d)(1) of this section otherwise apply to the asset sold by T1 because of an arrangement, the de minimis rules of this section does not apply to the asset because of the arrangement.

(e) Assume on June 1, 1992, Z acquires the T1 stock from T, other than in a qualified stock purchase, rather than P buying the T1 asset, and paragraph (f) of this section applies because there is an arrangement. Because the asset was disposed of and the T1 stock was acquired as part of the arrangement, the de minimis rules of this section does not apply to the asset.

(g) *Extension of consistency if dividends qualifying for 100 percent dividends received deduction are paid*—(1) *General rule for direct acquisitions from target.* Unless a section 338 election is made for target, the basis rules of paragraph (d) of this section apply to an asset if—

(i) Target recognizes gain (whether or not deferred) on disposition of the asset during the portion of the target consistency period that ends on the target acquisition date,

(ii) The asset is owned, immediately after the asset disposition and on the target acquisition date, by a corporation that acquires stock of target in the qualified stock purchase (or by an affiliate of an acquiring corporation), and

(iii) During the portion of the target consistency period that ends on the target acquisition date, the aggregate amount of dividends paid by target, to which section 243(a)(3) applies, exceeds the greater of—

(A) $250,000, or

(B) 125 percent of the yearly average amount of dividends paid by target, to which section 243(a)(3) applies, during the three calendar years immediately preceding the year in which the target consistency period begins (or, if shorter, the period target was in existence).

(2) *Other direct acquisitions having same effect.* The basis rules of paragraph (d) of this section also apply to an asset if the effect of a transaction described in paragraph (g)(1) of this section is achieved through any combination of disposition of assets and payment of dividends to which section 243(a)(3) applies (or any other dividends eligible for a 100 percent dividends received deduction). *See* pragraph (h)(4) of this section for additional rules relating to target affiliates that are controlled foreign corporations.

(3) *Indirect acquisitions.* The principles of paragraph (f) of this section also apply for purposes of this paragraph (g).

(4) *Examples.* This paragraph (g) may be illustrated by the following examples:

Example 1. Asset acquired from target paying dividends to which section 243 (a)(3) applies. (a) The S group does not file a consolidated return. In 1989, 1990, and 1991, T pays dividends to S to which section (a)(3) applies of $200,000, $250,000, and $300,000, respectively. On December 1, 1992, T sells an asset to P and recognizes gain. On January 2, 1993, P makes a qualified stock purchase of T from S. No section 338 election is made for T. During the portion of T's consistency period that ends on T's acquisition date, T pays S dividends to which section 243(a)(3) applies of $1,000,000.

(b) Under paragraph (g)(1) of this section, paragraph (d) of this section applies to the asset. T recognizes gain on disposition of the asset during the portion of T's consistency period that ends on T's acquisition date, the asset is owned by P immediately after the disposition and on T's acquisition date, and T pays dividends described in paragraph (g)(1)(iii) of this section. Consequently, under paragraph (d)(1) of this section, P's basis in the asset is T's adjusted basis in the asset immediately before the sale to P.

(c) If T is a controlled foreign corporation, the results would be the same if T pays dividends in the amount described in paragraph (g)(1)(iii) of this section that qualify for a 100 percent dividends received deduction. *See* sections 243(e) and 245.

(d) If S and T3 file a consolidated return in which T, T1, and T2 do not join, the results would be the same because the dividends paid by T are still described in paragraph (g)(1)(iii) of this section.

(e) If T, T1, and T2 file a consolidated return in which S and T3 do not join, the results would be the same because the dividends paid by T are still described in paragraph (g)(1)(iii) of this section.

Example 2. Asset disposition by target affiliate achieving same effect. (a) The S group does not file a consolidated return. On December 1, 1992, T2 sells an asset to P and recognizes gain. T pays dividends to S described in paragraph (g)(1)(iii) of this section. On January 2, 1993, P makes a qualified stock purchase of T from S. No section 338 election is made for T.

(b) Paragraph (g)(1) of this section does not apply to the asset because T did not recognize gain on the disposition of the asset. However, under paragraph (g)(2) of this section, because the asset disposition by T2 and the dividends paid by T achieve the effect of a transaction described in paragraph (g)(1) of this section, the carryover basis rule of paragraph (d)(1) of this section applies to the asset. The effect was achieved because T2 is a lower-tier affiliate of T and the dividends paid by T to S reduce the value to S of T and its lower-tier affiliates.

(c) If T2 is a controlled foreign corporation, the results would be the same because T2 is a lower-tier affiliate of T and the dividends paid by T to S reduce the value to S of T and its lower-tier affiliates.

(d) If P buys an asset from T3, rather than T2, the asset disposition and the dividends do not achieve the effect of a transaction described in paragraph (g)(1) of this section because T3 is not a lower-tier affiliate of T. Thus, the basis rules of paragraph (d) of this section do not apply to the asset. The results would be the same whether or not P also acquires the T3 stock (whether or not in a qualified stock purchase).

Example 3. Dividends by target affiliate achieving same effect. (a) The S group does not file a consolidated return. On December 1, 1992, T1 sells an asset to P and recognizes gain. On January 2, 1993, P makes a qualified stock purchase of T from S. No section 338 election is made for T. T does not pay dividends to S described in paragraph (g)(1)(iii) of this section. However, T1 pays dividends to T that would be described in paragraph (g)(1)(iii) of this section if T1 were a target.

(b) Paragraph (g)(1) of this section does not apply to the asset because T did not recognize gain on the disposition of the asset and did not pay dividends described in paragraph (g)(1)(iii) of this section. Further, paragraph (g)(2) of this section does not apply because the dividends paid by T1 to T do not reduce the valve to S of T and its lower-tier affiliates.

(c) If both S and T own T1 stock and T1 pays dividends to S that would be described in paragraph (g)(1)(iii) of this section if T1 were a target, paragraph (g)(2) of this section would apply because the dividends paid by T1 to S reduce the value to S of T and its lower-tier affiliates. If T, rather than T1, sold the asset to P, the results would be the same. Further, if T and T1 pay dividends to S that, only when aggregated, would be described in paragraph (g)(1)(iii) of this section (if they were all paid by T), the results would be the same.

Example 4. Gain reflected by reason of dividends. (a) S and T file a consolidated return in which T1 and T2 do not join. On December 1, 1992, T1 sells an asset to P and recognizes gain. On January 2, 1993, P makes a qualified stock purchase of T from S. No section 338 election is made for T. T1 pays dividends to T that would be described in paragraph (g)(1)(iii) of this section if T1 were a target.

(b) The requirements of paragraph (b) of this section are not satisfied because, under paragraph (c)(3) of this section, gain from T1's sale is not reflected in S's basis in the T stock by reason of the dividends paid by T1 to T.

(c) Although the dividends paid by T1 to T do not reduce the value to S of T and its lower-tier affiliates, paragraph (g)(2) of this section applies because the dividends paid by T1 to T are taken into account under § 1.1502-32 in determining S's basis in the T stock. Consequently, the carryover basis rule of paragraph (d)(1) of this section applies to the asset.

(h) *Consistency for target affiliates that are controlled foreign corporations*—(1) *In general.* This paragraph (h) applies only if a target is a domestic corporation. See paragraph (g) of this section for additional rules that may apply with respect to controlled foreign corporations.

(2) *Income inclusion resulting from asset dispositions*—(i) *Gain reflected by reason of income inclusion.* Gain of a target affiliate that is a controlled foreign corporation from the disposition of an asset is not reflected in the basis of target stock under paragraph (c) of this section unless the gain results in subpart F income or income to which section 1293 applies.

(ii) *Basis of controlled foreign corporation stock.* If, by reason of paragraph (h)((2)(i) of this section, the carryover basis rules of this section apply to an asset, no increase in basis in the stock of a controlled foreign corporation under section 961(a) or 1293(d)(1) is allowed to target or a target affiliate to the extent the increase is attributable to gain described in paragraph (h)(2)(i) of this section. A similar rule applies to the basis of any property by reason of which the stock of the controlled foreign corporation is considered owned under section 958(a)(2) or 1297(a).

(iii) *Operating rule.* For purposes of this paragraph (h)(2)—

(A) If there is an inclusion under section 951(a)(1)(A) and there is subpart F income for a category (as described in sections 953 and 954) that includes gain from the disposition of the asset, the inclusion is first attributed to the gain to the extent of the pro rata share of income for the category, and

(B) Any inclusion under section 1293 is first attributed to the gain to the extent of the pro rata share of the gain.

(3) *Stock issued by target affiliate that is a controlled foreign corporation.* The exception to the carryover basis rules of this section provided in paragraph (d)(2)(iii) of this section does not apply to stock issued by a target affiliate that is a controlled foreign corporation. After applying the carryover basis rules of this section to the stock, the basis in the stock is increased by the amount treated as a dividend under section 1248 on the disposition of the stock.

(4) *Certain distributions*—(i) *General rule.* In the case of a target affiliate that is a controlled foreign corporation, paragraph (g) of this section applies with respect to the target affiliate by treating any reference to a dividend to which section 243(a)(3) applies as a reference to any—

(A) Dividend,

(B) Amount treated as a dividend under section 1248, or

(C) Amount included in income under section 951(a)(1)(B)

if the amount is taken into account under § 1.1502-32 in determining the basis of target stock.

(ii) *Basis of controlled foreign corporation stock.* If the carryover basis rules of this section apply to an asset, the basis in the stock of the controlled foreign corporation (or any property by reason of which the stock is considered owned under section 958(a)(2)) is reduced by the sum of any amounts that are treated, solely by reason of the disposition of the asset, as a dividend, amount treated as a dividend under section 1248, or amount included in income under section 951(a)(1)(B).

(5) *Examples.* This paragraph (h) may be illustrated by the following examples:

Example 1. Stock of target affiliate that is a CFC. (a) The S group files a consolidated return; however, T2 is a controlled foreign corporation. On December 1, 1992, T1 sells the T2 stock to P and recognizes gain. On January 2, 1993, P makes a qualified stock purchase of T from S. No section 338 election is made for T.

(b) Under paragraph (b)(1) of this section, paragraph (d) of this section applies to the T2 stock. Under paragraph (h)(3) of this section, paragraph (d)(2)(iii) of this section does not apply to the T2 stock. Consequently, paragraph (d)(1) of this section applies to the T2 stock. However, after applying paragraph (d)(1) of this section, P's basis in the T2 stock is increased by the amount of T1's gain on the sale of the T2 stock that is treated as a dividend under section 1248. Because P has a carryover basis in the T2 stock, the T2 stock is not considered purchased within the meaning of section 338(h)(3) and no section 338 election may be made for T2.

Example 2. Stock of target affiliate CFC; inclusion under subpart F. (a) The S group files a consolidated return; however, T2 is a controlled foreign corporation. On December 1, 1992, T2 sells an asset to P and recognizes subpart F income that results in an inclusion in T1's gross income under section 951(a)(1)(A). On January 2, 1993, P makes a qualified stock purchase of T from S. No section 338 election is made for T.

(b) Because gain from the disposition of the asset results in an inclusion under section 951(a)(1)(A), the gain is reflected in the basis of the T stock as of T's acquisition date. *See* paragraph (h)(2)(i) of this section. Consequently, under paragraph (b)(1) of this section, paragraph (d)(1) of this section applies to the asset. In addition, under paragraph (h)(2)(ii) of this section, T1's basis in the T2 stock is not increased under section 961(a) by the amount of the inclusion that is attributable to the sale of the asset.

(c) If, in addition to making a qualified stock purchase of T, P acquires the T2 stock from T1 on January 1, 1993, the results are the same for the asset sold by T2. In addition, under paragraph (h)(2)(ii) of this section, T1's basis in the T2 stock is not increased by the amount of the inclusion that is attributable to the gain on the sale of the asset. Further, under paragraph (h)(3) of this section, paragraph (d)(1) of this section applies to the T2 stock. However, after applying pargraph (d)(1) of this section, P's basis in the T2 stock is increased by the amount of T1's gain on the sale of the T2 stock that is treated as a dividend under section 1248. Finally, because P has a carryover basis in the T2 stock, the T2 stock is not considered purchased within the meaning of section 338 (h)(3) and no section 338 election may be made for T2.

(d) If P makes a qualified stock purchase of T2 from T1, rather than of T from S, and T1's gain on the sale of T2 is treated as a dividend under section 1248, under paragraph (h)(1) of this section, paragraphs (h)(2) and (3) of this section do not apply because there is no target that is a domestic corporation. Consequently, the carryover basis rules of this section do not apply to the asset sold by T2 or the T2 stock.

Example 3. Gain reflected by reason of section 1248 dividend; gain from non-subpart F asset. (a) The S group files a consolidated return; however, T2 is a controlled foreign corporation. In 1989, 1990, 1991 and 1992, T2

does not pay any dividends to T1 and no amount is included in T1's income under section 951(a)(1)(B). On December 1, 1992, T2 sells an asset with a basis of $400,000 to P for $900,000. T2's gain of $500,000 is not subpart F income. On December 15, 1992, T1 sells T2, in which it has a basis of $600,000, to P for $1,600,000. Under section 1248, $800,000 of T1's gain of $1,000,000 is treated as a dividend. However, in the absence of the sale of the asset by T2 to P, only $300,000 would have been treated as a dividend under section 1248. On December 30, 1992, P makes a qualified stock purchase of T1 from T. No section 338 election is made for T1.

(b) Under paragraph (h)(4) of this section, paragraph (g)(2) of this section applies by reference to the amount treated as a dividend under section 1248 on the disposition of the T2 stock. Because the amount treated as a dividend is taken into account in determining T's basis in the T1 stock under § 1.1502-32, the sale of the T2 stock and the deemed dividend have the effect of a transaction described in paragraph (g)(1) of this section. Consequently, paragraph (d)(1) of this section applies to the asset sold by T2 to P and P's basis in the asset is $400,000 as of December 1, 1992.

(c) Under paragraph (h)(3) of this section, paragraph (d)(1) of this section applies to the T2 stock and P's basis in the T2 stock is $600,000 as of December 15, 1992. Under paragraphs (h)(3) and (4)(ii) of this section, however, P's basis in the T2 stock is increased by $300,000 (the amount of T1's gain treated as a dividend under section 1248 ($800,00), other than the amount treated as a dividend solely as a result of the sale of the asset by T2 to P ($500,000)) to $900,000.

(i) [Reserved.]

(j) *Anti-avoidance rules.* For purposes of this section—

(1) *Extension of consistency period.* The target consistency period is extended to include any continuous period that ends on, or begins on, any day of the consistency period during which a purchasing corporation, or any person related, within the meaning of section 267(b) or 707(b)(1), to a purchasing corporation, has an arrangement—

(i) To purchase stock of target, or

(ii) To own an asset to which the carryover basis rules of this section apply, taking into account the extension.

(2) *Qualified stock purchase and 12-month acquisition period.* The 12-month acquisition period is extended if, pursuant to an arrangement, a corporation acquires by purchase stock of another corporation satisfying the requirements of section 1504(a)(2) over a period of more than 12 months.

(3) *Acquisitions by conduits*—(i) *Asset ownership.* A corporation is treated as owning any portion of an asset attributed to the corporation from a conduit under section 318(a) (treating any asset as stock for this purpose), for purposes of—

(A) The asset ownership requirements of this section, and

(B) Determining whether a controlled foreign corporation is a target affiliate for purposes of paragraph (h) of this section.

If the basis rules of this section apply to the asset, the basis rules of this section apply to the entire asset (not just the portion for which ownership is attributed).

(ii) *Stock acquisition*—(A) *Purchase by conduit.* A corporation is treated as purchasing stock of another corporation attributed to the corporation from a conduit under section 318(a) on the day the stock is purchased by the conduit. The corporation is not treated as purchasing the stock, however, if the conduit purchased the stock more than two years before the date the stock is first attributed to the corporation.

(B) *Purchase of conduit.* If a corporation purchases an interest in a conduit (treating the interest as stock for this purpose), the corporation is treated as purchasing on that date any stock owned by a conduit on that date and attributed to the corporation under section 318(a) with respect to the interest in the conduit that was purchased.

(4) *Conduit.* A person (other than a corporation) is a conduit as to a corporation if—

(i) The corporation would be treated under section 318(a)(2) (A) and (B) (attribution from partnerships, estates, and trusts) as owning any stock owned by the person, and

(ii) The corporation, together with its affiliates, would be treated as owning an aggregate of at least 50 percent of the stock owned by the person.

(5) *Existence of arrangement.* The existence of an arrangement is determined under all the facts and circumstances. For an arrangement to exist, there need not be an enforceable, written, or unconditional agreement, and all the parties to the transaction need not have participated in each step of the transaction. One factor indicating the existence of arrangement is the participation of a related party. For this purpose, persons are related if they are related within the meaning of section 267(b) or 707(b)(1).

(6) *Predecessor and successor*—(i) *Persons.* A reference to a person (including target, target affiliate, and purchasing corporation) includes, as the context may require, a reference to a predecessor or successor. For this purpose, a predecessor is a transferor or distributor of assets to a person (the successor) in a transaction—

(A) To which section 381(a) applies, or

(B) In which the successor's basis for the assets is determined, directly or indirectly, in whole or in part, by reference to the basis of the transferor or distributor.

(ii) *Assets.* A reference to an asset (the first asset) includes, as the context may require, a reference to any asset the basis of which is determined, directly or indirectly, in whole or in part, by reference to the first asset.

(7) *Examples.* This paragraph (j) may be illustrated by the following examples:

Example 1. Asset owned by conduit treated as owned by purchaser of target stock. (a) P owns a 60-percent interest in Y. On March 1, 1992, T sells an asset to Y and recognizes gain. On January 1, 1993, P makes a qualified stock purchase of T from S. No section 338 election is made for T.

(b) Under paragraph (j)(4) of this section, Y is a conduit with respect to P. Consequently, under paragraph (j)(3)(i)(A) of this section, P is treated as owning 60 percent of the asset on March 1, 1992 and January 1, 1993. Because P is treated as owning part or all of the asset both immediately after the asset disposition and on T's acquisition date, paragraph (b) of this section applies to the asset. Consequently, paragraph (d)(1) of this section applies to the asset and Y's basis in the asset is T's adjusted basis in the asset immediately before the sale to Y.

Example 2. Corporation whose stock is owned by conduit treated as affiliate. (a) P owns an 80-percent interest in Y. Y owns all of the stock of Z. On March 1, 1992, T sells an asset to Z and recognizes gain. On January 1, 1993, P makes a qualified stock purchase of T from S. No section 338 election is made for T.

(b) Under paragraph (j)(4) of this section, Y is a conduit with respect to P. Consequently, under paragraph (j)(3)(i)(A) of this section, P is treated as owning 80 percent of the Z stock and Z is therefore treated as an affiliate of P for purposes of applying the asset ownership requirements of paragraph (b)(1)(iii) of this section. Because Z, an affiliate of P, owns the assets both immediately after the asset disposition and on T's acquisition date, paragraph (b) of this section applies to the asset, and the asset's basis is determined under paragraph (d) of this section.

(c) If, instead of owning an 80-percent interest in Y, P owned a 79-percent interest in Y, Z would not be treated as an affiliate of P and paragraph (b) of this section would not apply to their asset.

Example 3. Qualified stock purchase by reason of stock purchase by conduit. (a) P owns a 90-percent interest in Y. Y owns a 60-percent interest in Y1. On December 31, 1992, T sells an asset to P and recognizes gain. On January 2, 1993, P purchases 70 percent of the T stock from S and Y1 purchases the remaining 30 percent of the T stock from S.

(b) Under paragraph (j)(3)(ii)(A) of this section, P is treated as purchasing on January 2, 1993, the 16.2 percent of the T stock that is attributed to P from Y and Y1 under section 318(a). Thus, for purposes of this section, P is treated as making a qualified stock purchase of T on January 2, 1993, paragraph (b) of this

section applies to the asset, and the asset's basis is determined under paragraph (d) of this section. However, because P is not treated as having made a qualified stock purchase of T for purposes of making an election under section 338, no election can be made for T.

(c) If Y1 purchases the 30 percent of the T stock from S on December 2, 1991, rather than on January 2, 1993, P would be treated as purchasing the 16.2 percent of the T stock on December 2, 1991. Thus, if paragraph (j)(2) of this section (relating to extension of the 12-month acquisition period) does not apply, P would not be treated as making a qualified stock purchase of T, because P is not treated as purchasing T stock satisfying the requirements of section 1504(a)(2) within a 12-month period.

Example 4. Successor asset. (a) On February 12, 1992, T sells stock of X to P1 and recognizes gain. On December 1, 1992, P1 exchanges its X stock for stock in new X in a reorganization qualifying under section 368(a)(1)(F). On January 1, 1993, P1 makes a qualified stock purchase of T from S. No section 338 election is made for T.

(b) The asset ownership requirements of paragraph (b)(1)(iii) of the section are satisfied because, under paragraph (j)(6)(ii) of this section, P1 is treated as owning the X stock on T's acquisition date. P1 is treated as owning the X stock on that date because P1 owns the new X stock and P1's basis in the new X stock is determined by reference to P1's basis in the X stock. Consequently, under paragraph (d)(1) of this section, P1's basis in the X stock on February 1, 1992 is T's adjusted basis in the X stock immediately before the sale of P1.

§ 1.338–5 International aspects of section 338.

(a) *Scope.* This section provides guidance regarding the international aspects of section 338. As provided in § 1.338–1(c)(14), a foreign corporation, a DISC, or a corporation for which a section 936 election has been made is considered a target affiliate for all purposes of section 338. In addition, stock described in section 338(h)(6)(B)(ii) held by a target affiliate is not excluded from the operation of section 338.

(b) *Application of section 338 to foreign targets*—(1) *In general.* For purposes of subtitle A, the deemed sale gain, as defined in § 1.338–3(b)(4), of a foreign target for which a section 338 election is made (FT), and the corresponding earning and profits, are taken into account in determining the taxation of FT and FT's direct and indirect shareholders. See, however, section 338(h)(16). For example, the income and earnings and profits of FT are determined, for purposes of sections 551, 951, 1248, and 1293, by taking into account the deemed sale gain.

(2) *Ownership of FT stock on the acquisition date.* A person who transfers FT stock to the purchasing corporation on FT's acquisition date is considered to own the transferred stock at the close of FT's acquisition date See, e.g., § 1.951-1(f) (relating to determination of holding period for purposes of sections 951 through 964). If on the acquisition date the purchasing corporation owns a block of FT stock that was acquired before FT's acquisition date, the purchasing corporation is considered to own such block at the close of the acquisition date.

(3) *Carryover FT stock*—(i) *Definition.* FT stock is carryover FT stock if—

(A) FT was a controlled foreign corporation within the meaning of section 957 (taking into account section 953(c)) at any time during the portion of the 12-month acquisition period that ends on the acquisition date, and

(B) Such stock is owned as of the beginning of the day after FT's acquisition date by a person other than a purchasing corporation, or by a purchasing corporation if the stock is nonrecently purchased and is not subject to a gain recognition election under § 1.338(b)–1(e)(2).

(ii) *Carryover of earnings and profits.* The earnings and profits of old FT (and associated foreign taxes) attributable to the carryover FT stock (adjusted to reflect deemed sale gain) carry over to new FT solely for purposes of—

(A) Characterizing an actual distribution with respect to a share of carryover FT stock as a dividend,

(B) Characterizing gain on a post-acquisition date transfer of a share of carryover FT stock as a dividend under section 1248 (if such section is otherwise applicable),

(C) Characterizing an investment of earnings in United States property as income under sections 951(a)(1)(B) and 956 (if such sections are otherwise applicable), and

(D) Determining foreign taxes deemed paid under sections 902 and 960 with respect to the amount treated as a dividend or income by virtue of this paragraph (b)(3)(ii) (subject to the operation of section 338(h)(16)).

(iii) *Cap on carryover of earnings and profits.* The amount of earnings and profits of old FT taken into account with respect to a share of carryover FT stock is limited to the amount that would have been included in gross income of the owner of such stock as a dividend under section 1248 if—

(A) The shareholder transferred that share to the purchasing corporation on FT's acquisition date for a consideration equal to the fair market value of that share on that date, or

(B) In the case of nonrecently purchased FT stock treated as carryover FT stock, a gain recognition election under section 338(b)(3)(A) applied to that share. For purposes of the preceding sentence, a shareholder that is a controlled foreign corporation is considered to be a United States person, and the principle of section 1248(c)(2)(D)(ii) (concerning a United States person's indirect ownership of stock in a foreign corporation) applies in determining the correct holding period.

(iv) *Post-acquisition date distribution of old FT earnings and profits.* A post-acquisition date distribution with respect to a share of carryover FT stock is considered to be derived first from earnings and profits derived after FT's acquisition date and then from earnings and profits derived on or before FT's acquisition date.

(v) *Old FT earnings and profits unaffected by post-acquisition date deficits.* The carryover amount for a share of carryover FT stock is not reduced by deficits in earnings and profits incurred by new FT. This rule applies for purposes of determining the amount of foreign taxes deemed paid regardless of the fact that there are no accumulated earnings and profits. For example, a distribution by new FT with respect to a share of carryover FT stock is treated as a dividend by the distribution to the extent of the carryover amount for that share notwithstanding that new FT has no earnings and profits.

(v) *Character of FT stock as carryover FT stock eliminated upon disposition.* A share of FT stock is not considered carryover FT stock after it is disposed of provided that all gain realized on the transfer is recognized at the time of the transfer, or that, if less than all of the realized gain is recognized, the recognized amount equals or exceeds the remaining carryover amount for that share.

(4) *Passive foreign investment company stock.* Stock that is owned as of the beginning of the day after FT's acquisition date by a person other than a purchasing corporation, or by a purchasing corporation if the FT stock is nonrecently purchased stock not subject to a gain recognition election under § 1.338(b)–1(e)(2), is treated as passive foreign investment company stock to the extent provided in section 1297(b)(1).

(c) *Dividend treatment under section 1248(e).* The principles of this paragraph (b) apply to shareholders of a domestic corporation subject to section 1248(e).

(d) *Allocation of foreign taxes.* If a section 338 election is made for target (whether foreign or domestic), and target's taxable year under foreign law (if any) does not close at the end of the acquisition date, foreign income taxes attributable to the income earned by

target during such foreign taxable year are allocated to old target and new target. Such allocation is made under the principles of § 1.1502–76(b)(4).

(e) *Operation of section 338(h)(16).* [Reserved.]

(f) *Examples.* (1) Except as otherwise provided, all corporations use the calendar year as the taxable year, have no earnings and profits (or deficits) accumulated for any taxable year, and have only one class of outstanding stock.

(2) This section may be illustrated by the following examples:

Example 1. Gain recognition election for carryover FT stock. (a) A has owned 90 of the 100 shares of CFCT stock since CFCT was organized on March 13, 1989. P has owned the remaining 10 shares of CFCT stock since CFCT was organized. Those 10 shares constitute nonrecently purchased stock in P's hands within the meaning of section 338(b)(6)(B). On November 1, 1992, P purchases A's 90 shares of CFCT stock for $90,000,000 and makes a section 338 election for CFCT. P also makes a gain recognition election under section 338(b)(3)(A) and § 1.338(b)–1(e)(2).

(b) CFCT's earnings and profits for its short 1992 taxable year ending on November 1, 1992, are $50,000, determined without regard to the deemed asset sale. Assume A recognizes gain of $81,000 on the sale of the CFCT stock. Further, assume that CFCT recognizes gain of $40,000 by reason of its deemed sale of assets under section 338(a)(1)

(c) A's sale of CFCT stock to P is a transfer to which section 1248 and paragraphs (b) (1) and (2) of this section apply. For purposes of applying section 1248 (a) to A, the earnings and profits of CFCT for its short taxable year ending on November 1, 1992, are $90,000 (the earnings and profits for that taxable year as determined under § 1.1248–2(e) ($50,000) plus earnings from the deemed sale ($40,000)). Thus, A's entire gain is characterized as a dividend under section 1248 (but see section 338(h)(16)).

(d) Assume that P recognizes a gain of $9,000 with respect to the 10 shares of nonrecently purchased CFCT stock by reason of the gain recognition election. Because P is treated as selling the nonrecently purchased stock for all purposes of the Code, section 1248 applies. Thus, under § 1.1248–2(e), $9,000 of the $90,000 of earnings and profits for 1992 are attributable to the block of 10 shares of CFCT stock deemed sold by P at the close of November 1, 1992 ($90,000 × 10/100). Accordingly, P's entire gain on the deemed sale of 10 shares of CFCT stock is included under section 1248(a) in P's gross income as a dividend (but see section 338(h)(16)).

Example 2. No gain recognition election for carryover FT stock. (a) Assume the same facts as in *Example 1*, except that P does not make a gain recognition election.

(b) The 10 shares of nonrecently purchased CFCT stock held by P is carryover FT stock under paragraph (b)(3) of this section. Accordingly, the earnings and profits (and attributable foreign taxes) of old CFCT carry over to new CFCT solely for purposes of that block of 10 shares. The amount of old CFCT's earnings and profits taken into account with respect to that block in the event, for example, of a distribution by new CFCT with respect to that block is the amount of the section 1248 dividend that P would have recognized with respect to that block had it made a gain recognition election under section 338(b)(3)(A). Under the facts of *Example 1*, P would have recognized a gain of $9,000 with respect to that block, all of which would have been a section 1248 dividend ($90,000 × 10/100). Accordingly, the carryover amount for the block of 10 shares of nonrecently purchased CFCT stock is $9,000.

Example 3. Sale of controlled foreign corporation stock prior to and on the acquisition date. (a) X and Y, both U.S. corporations, have each owned 50% of the CFCT stock since 1986. Among CFCT's assets are assets the sale of which would generate subpart F income. On December 31, 1992, X sells its CFCT stock to P. On June 30, 1993, Y sells its CFCT stock to P. P makes a section 338 election for CFCT. In both 1992 and 1993, CFCT has subpart F income resulting from operations.

(b) For taxable year 1992, X and Y are United States shareholders on the last day of CFCT's taxable year, so pursuant to section 951(a)(1)(A) each must include in income its pro rata share of CFCT's subpart F income for 1992. Because P's holding period in the CFCT stock acquired from X does not begin until January 1, 1993, P is not a United States shareholder on the last day of 1992 for purposes of section 951(a)(1)(A) (See § 1.951–1(f)). X must then determine the extent to which section 1248 characterizes its gain on the sale of CFCT stock as a dividend.

(c) For the short taxable year ending June 30, 1993, Y is considered to own the CFCT stock sold to P at the close of CFCT's acquisition date. Because the acquisition date is the last day of CFCT's taxable year, Y and P are United States shareholders on the last day of CFCT's taxable year. Pursuant to section 951(a)(1)(A), each must include its pro rata share of CFCT's subpart F income for the short taxable year ending June 30, 1993. This includes any income generated on the deemed sale of CFCT's assets. Y must then determine the extent to which section 1248 recharacterizes its gain on the sale of the CFCT stock as a dividend, taking into account any increase in CFCT's earning and profits due to the deemed sale of assets.

Example. 4. Acquisition of control for purposes of section 951 prior to the acquisition date. FS owns 100 percent of the FT stock. On July 1, 1993, P buys 60% of the FT stock. On December 31, 1993, P buys the remaining 40% of the FT stock and makes a section 338 election for FT. For tax year 1993, FT has earnings and profits of $1,000 (including earnings resulting from the deemed sale). The section 338 election results in $500 of subpart F income. As a result of the section 338 election, P must include in gross income the following amount under section 951(a)(1)(A) (*see* § 1.951–(b)(2)):

FT's subpart F income for 1993	$500.00
Less: reduction under section 951(a)(2)(A) for period (1–1–93 through 7–1–93) during which FT is not a controlled foreign corporation ($500 × 182/365)	249.32
Subpart F income as limited by section 951(a)(2)(A)	$250.68
P's pro rata share of subpart F income as determined under section 951(a)(2)(A) (60% × 250.68)	$150.41

Example 5. Coordination with section 936. (a) T is a corporation for which a section 936 election has been made. P makes a qualified stock purchase of T and makes a section 338 election for T.

(b) T's deemed sale of assets under section 338 constitutes a sale for purposes of subtitle A of the Code, including section 936(a)(1)(A)(ii). To the extent that the assets deemed sold are used in the conduct of an active trade or business in a possession for purposes of section 936(a)(1)(A)(i), and assuming all the other conditions of section 936 are satisfied, the income from the deemed sale qualifies for the credit granted by section 936(a). The source of income from the deemed sale is determined as if the assets had actually been sold and is not affected for purposes of section 936 by section 338(h)(16).

(c) Because new T is treated as a new corporation for purposes of subtitle A of the Code, the three year testing period in section 936(a)(2)(A) begins again for new T on the day following T's acquisition date. Thus, if the character or source of old T's gross income disqualified it for the credit under section 936, a fresh start is allowed by section 338 election.

§ 1.338 (b)–1 Adjusted grossed-up basis.

(a) *Scope.* This section provides rules under section 338(b) to determine the adjusted grossed-up basis ("AGUB") for target. The AGUB is the amount for which new target is deemed to have purchased all of its assets in the deemed purchase under section 338(a)(2). The AGUB is allocated among target's assets in accordance with § 1.338(b)–2T to determine the price at which the assets are deemed to have been purchased. Subsequent adjustments to AGUB and the allocation of such adjustments to target's assets may be made under § 1.338(b)–3T.

(b) *Adjustment events.* "Adjustment events" are increases (or decreases) in the consideration paid for recently or nonrecently purchased stock, reductions in target's liabilities included in AGUB as of the beginning of the day after the acquisition date, and old target liabilities that become fixed and determinable.

(c) *AGUB*—(1) *In general.* AGUB is the sum of—

(i) The purchasing corporation's grossed-up basis in recently purchased target stock,

(ii) The purchasing corporation's basis in nonrecently purchased target stock,

(iii) The liabilities of target, and

(iv) Other relevant items.

(2) *Time when AGUB determined.* AGUB is initially determined at the beginning of the day after the acquisition date of target. However, adjustment events that occur during new target's first taxable year are taken into account for purposes of determining AGUB and the basis of target's assets as if they had occurred at the beginning of the day after the acquisition date.

(3) *Sample AGUB Formula.* (i) The sample formula is as follows:

AGUB = GRP + L + X

(ii) For purposes of this formula—

(A) "GRP" is the purchasing corporation's grossed-up basis in recently purchased target stock.

(B) "BNP" is the purchasing corporation's basis in nonrecently purchased target stock.

(C) "L" is the sum of new target's liabilities.

(D) "X" is other relevant items.

(d) *Grossed-up basis of recently purchased stock*—(1) *In general.* The purchasing corporation's grossed-up basis of recently purchased target stock is the product of—

(i) The purchasing corporation's basis in recently purchased target stock (as defined in section 338(b)(6)(A)) at the beginning of the day after the acquisition date, multiplied by

(ii) A fraction the numerator of which is 100 percent minus the percentage of target stock (by value) attributable to the purchasing corporation's nonrecently purchased target stock and the denominator of which is the percentage of target stock (by value) attributable to the purchasing corporation's recently purchased target stock. *See* section 338(b)(4).

If target has a single class of outstanding stock, the purchasing corporation's grossed-up basis in recently purchased target stock reflects the total price the purchasing corporation would have paid for all outstanding target stock (other than the purchasing corporation's nonrecently purchased target stock, as defined in section 338(b)(6)(B)) had the purchasing corporation purchased all such stock (other than the nonrecently purchased target stock) for a price per share equal to the average price per share that the purchasing corporation paid for the recently purchased target stock.

(2) *Target subsidiary.* If target (T) owns stock in a target affiliate (T1), the grossed-up basis of the recently purchased T1 stock is the product of—

(i) The basis of the T1 stock in the hands of T as of the beginning of the day after T's acquisition date, multiplied by

(ii) A fraction the numerator of which is 100 percent minus the percentage of T1 stock (by value) attributable to the nonrecently purchased T1 stock and the denominator of which is the percentage of T1 stock (by value) attributable to the recently purchased T1 stock. See section 338(b)(4).

For example, if T is deemed to purchase 80 percent (by value) of T1's stock by reason of section 338(h)(3)(B), the grossed-up basis of recently purchased T1 stock is determined by multiplying 100/80 times the amount of T's AGUB allocated to T1's stock under § 1.338(b)–2T.

(e) *Basis of nonrecently purchased stock*—(1) *In general.* In the absence of an election under section 338(b)(3) ("gain recognition election"), the purchasing corporation's basis in nonrecently purchased stock is the purchasing corporation's historic basis in that stock.

(2) *Effect of gain recognition election*—(i) *In general.* If the purchasing corporation makes a gain recognition election, for all purposes of the Code and regulations—

(A) The purchasing corporation is treated as if it sold on the acquisition date the nonrecently purchased target stock for the basis amount determined under paragraph (e)(2)(ii) of this section, and

(B) The purchasing corporation's basis on the acquisition date in nonrecently purchased target stock is the basis amount.

If target has a single class of outstanding stock, the purchasing corporation's basis in each share of nonrecently purchased target stock after the gain recognition election is equal to the average price per share of the purchasing corporation's recently purchased target stock.

(ii) *Basis amount.* The basis amount is equal to the purchasing corporation's grossed-up basis in recently purchased target stock multiplied by a fraction the numerator of which is the percentage of target stock (by value) attributable to the purchasing corporation's nonrecently purchased target stock and the denominator of which is 100 percent minus the numerator amount.

(iii) *Losses not recognized.* Only gains (unreduced by losses) on the nonrecently purchased target stock are recognized.

(iv) *Stock subject to election.* The gain recognition election applies to—

(A) All nonrecently purchased target stock, and

(B) Any nonrecently purchased stock in a target affiliate having the same acquisition date as target if such target affiliate stock is held by the purchasing corporation on such date.

(3) *Procedure for making gain recognition election*—(i) *In general.* The gain recognition election is made by attaching a gain recognition statement to a timely filed Form 8023 for target. The gain recognition statement must contain the information specified in the form and its instructions. The gain recognition election is irrevocable.

(ii) *Section 338(h)(10) election.* If a section 338(h)(10) election is made for target, the purchasing corporation is deemed to have made a gain recognition election.

(4) *Comparison with elective ADSP formula.* Whenever the purchasing corporation holds nonrecently purchased target stock at a basis that differs from the purchasing corporation's basis in recently purchased target stock, the purchasing corporation's grossed-up basis in recently purchased target stock as calculated for purposes of the AGUB differs from the "grossed-up basis of the purchasing corporation's recently purchased target stock" as calculated in the elective ADSP formula. The elective ADSP formula treats the purchasing corporation's nonrecently purchased target stock in the same manner as target stock not held by the purchasing corporation. If a gain recognition election is made, the sum of the purchasing corporation's grossed-up basis in recently purchased target stock and the purchasing corporation's basis in nonrecently purchased target stock equals the "grossed-up basis of the purchasing corporation's recently purchased target stock" as calculated in the elective ADSP formula.

(f) *Liabilities of new target*—(1) *In general.* The liabilities of new target include its liabilities (and the liabilities to which target's assets are subject) as of the beginning of the day after the acquisition date (other than liabilities that were neither liabilities of old target nor liabilities to which old target's assets were subject).

(2) *Excluded obligations*—(i) *In general.* In order to be included in AGUB at the beginning of the day after the acquisition date, an obligation must be a bona fide liability of target as of that date which is properly includible in basis under principles of tax law that would apply if new target had acquired old target's assets from an unrelated person and, as part of the transaction, had assumed or taken property subject

to the obligation. For example, if, as of the beginning of the day after the acquisition date, the amount of a contingent or speculative obligation of target is not properly includible in basis under the preceding sentence, the obligation is not initially included in AGUB.

(ii) *Time when excluded obligations taken into account.* Obligations that, under this paragraph (f)(2), are initially excluded from AGUB are taken into account in redetermining AGUB and the basis of target's assets under principles of tax law that would apply if new target had acquired old target's assets directly from an unrelated person and, as part of the transaction, had assumed or taken property subject to those obligations. For the application of these principles of tax law to certain contingent liabilities that are initially excluded from AGUB under this paragraph (f)(2), see § 1.338(b)–3T.

(3) *Liabilities taken into account in determining amount realized on subsequent disposition.* In determining the amount realized on a subsequent sale or other disposition of property deemed purchased by new target, the entire amount of any liability included in AGUB is considered to be an amount taken into account in determining new target's basis in property which secures the liability for purposes of applying § 1.1001–2(a). Thus, if a liability is included in AGUB, § 1.1001–2(a)(3) does not prevent the amount of such liability from being treated as discharged within the meaning of § 1.1001–2(a)(4) as a result of new target's sale or disposition of the property which secures such liability.

(g) *Other relevant items.*—(1) *In general.* AGUB may be increased (or decreased) for "other relevant items." For this purpose, other relevant items may only arise from adjustment events that occur after the close of new target's first taxable year and adjustments under paragraph (g)(3) of this section. See § 1.338(b)–3T (relating to the treatment of certain subsequent adjustments to AGUB).

(2) *Flow-through of relevant item adjustment to target subsidiary.* If the amount of AGUB of target (T) allocated to the stock of a target affiliate (T1) is subsequently increased (or decreased) by reason of an other relevant item under this paragraph (g), the grossed-up basis of the T1 stock (and, if a section 338 election is made for T1, T1's AGUB) is also increased (or decreased) as if the increase (or decrease) in the basis of the stock was an adjustment to the purchase price deemed paid by T for such stock. The resulting increase (or decrease) in AGUB of T1 is allocated among T1's assets in accordance with §§ 1.338(b)–2T and 1.338 (b)–3T.

(3) *Adjustments by the Internal Revenue Service.* In connection with the examination of a return, the District Director may increase (or decrease) AGUB for items other than those described in paragraphs (g) (1) and (2) of this section under the authority of section 338(b)(2) and allocate such amounts to target's assets under the authority of section 338(b)(5) so that AGUB and the basis of target's assets properly reflect the cost to the purchasing corporation of its interest in target's assets. Such items may include distributions from target to the purchasing corporation, capital contributions from the purchasing corporation to target during the 12-month acquisition period, or acquisitions of target stock by purchasing corporation after the acquisition date from minority shareholders.

(h) *Examples.* (1) For purposes of the examples in this paragraph (h), T has no liabilities other than a tax liability resulting from the deemed sale of assets.

(2) This section may be illustrated by the following examples:

Example 1. (a) Before July 1, 1992, P purchases 10 of the 100 shares of T stock for $5,000. On July 1, 1993, P purchases 80 shares of T stock for $60,000 and makes a section 338 election for T. As of July 1, 1993, T's only asset is raw land with an adjusted basis to T of $50,400 and a fair market value of $100,000. T has no loss or tax credit carryovers to 1993. T's marginal tax rate for any ordinary income or net capital gain resulting from the deemed sale of assets is 34 percent. The 10 shares purchased before July 1, 1992, constitute nonrecently purchased T stock with respect to P's qualified stock purchase of T stock on July 1, 1993.

(b) The elective ADSP formula as applied to these facts is the same as in *Example 2* of § 1.338–3(d)(5). Accordingly, the ADSP of T is $87,672.72. The existence of nonrecently purchased T stock is irrelevant for purposes of the elective ADSP formula, because that formula treats P's nonrecently purchased T stock in the same manner as T stock not held by P.

(c) The total tax liability resulting from T's deemed sale of assets, as calculated under the ADSP formula, is $12,672.72.

(d) If P does not make a gain recognition election, the AGUB of new T's assets is $85,172.72, determined as follows:

AGUB = GRP + BNP + L + X
AGUB = $60,000 × [(1–.1)/.8] + $5,000 + $12,672.72 + 0
AGUB = $85,172.72

(e) If P makes a gain recognition election, the AGUB of new T's assets is $87,672.72, determined as follows:

AGUB = $60,000 × [(1–.1)/.8] + $60,000 × [(1–.1)/.8] × [.1/(1–.1)] + $12,672.72
AGUB = $87,672.72

(f) The calculation of AGUB if P makes a gain recognition election may be simplified as follows:

AGUB = $60,000/.8 + $12,672.72
AGUB = $87,672.72

(g) As a result of the gain recognition election, P's basis in its nonrecently purchased T stock is increased from $5,000 to $7,500 (*i.e.*, $60,000 × [(1 –.1)/.8] × [1/(1 –.1)]). Thus, P recognizes a gain in 1993 with respect to its nonrecently purchased T stock of $2,500 (*i.e.*, $7,500 – $5,000).

Example 2. (a) On January 1, 1993, P purchases one-third of the T stock for $300,000. On March 1, 1993, T distributes a dividend to all its shareholders consisting of property with a fair market value of $210,000 of which P receives $70,000. On April 15, 1993, P purchases the remaining T stock for $480,000 and makes a section 338 election for T.

(b) In appropriate circumstances, the District Director may decrease the AGUB of T by $49,000 (the nontaxed portion of the dividend, as defined in section 1059 (b)) in order to properly reflect the cost to P of its interest in T's assets which P is deemed to have purchased.

Example 3. (a) T's sole asset is a building worth $100,000. On August 1, 1990, P purchases 10 of the 100 shares of T stock for $8,000. On June 1, 1994, P purchases 50 shares of T stock for $50,000. On June 14, 1994, P contributes a tract of land to the capital of T and receives 10 additional shares of T stock as a result of the contribution. Both the basis and fair market value of the land at that time are $10,800. On June 30, 1994, P purchases the remaining 40 shares of T stock for $40,000 and makes a section 338 election for T

(b) In order to prevent the shifting of basis from the contributed property to other assets of T, the District Director may specifically allocate part of T's AGUB to the contributed property as shown in subdivisions (c) and (d) of this example.

(c) The AGUB of T is $108,800.

(d) $10,800 of the AGUB is allocated to the land, leaving $98,000 to be allocated among T's other assets, here, only the building.

Par. 5. Sections 1.338 (b)–2T (a) (2) and (d) *Example (1)* (i), and 1.338 (b)–3T (b) are revised to read as follows:

§ 1.338(b)–2T Allocation of adjusted grossed-up basis among target assets (temporary).

(a) * * *

(2) *Fair market value.* The "fair market value" of an asset is the gross fair market value of that asset (*i.e.*, fair market value determined without regard to mortgages, liens, pledges, or other liabilities).

* * * * *

(d) * * *

Example (1). (i) T owns 90% of the outstanding T1 stock. P purchases 100% of the outstanding T stock for $2,000. A section 338 election is made for T and, as a result, T1 is considered acquired in a qualified stock purchase. A section 338 election is made for

T1. The grossed-up basis of the T stock is $2,000 (*i.e.*, $2,000×½).

* * * * *

§ 1.338(b)–3T Subsequent adjustments to adjusted grossed-up basis (temporary).

* * * * *

(b) *Definitions*—(1) *Contingent liability.* A contingent liability is a liability of target at the beginning of the day after the acquisition date that is not fixed and determinable by the close of new target's first taxable year.

(2) *Contingent amount.* The term "contingent amount" means the amount of the consideration to be paid for recently or nonrecently purchased stock that is not fixed or determinable by the close of new target's first taxable year, plus contingent liabilities of target.

(3) *Reduction amount.* The term "reduction amount" means a reduction after the close of new target's first taxable year in either (i) the consideration paid for recently or nonrecently purchased stock, or (ii) a liability of target (or a liability to which one or more of its assets are subject) that has been taken into account in determining AGUB.

(4) *Acquisition date asset.* The term "acquisition date asset" means any asset held by new target at the beginning of the day after the acquisition date (other than Class I assets).

* * * * *

Par. 6. Section 1.338 (h) (10)–1 and section 1.338 (i)–1 are added to read as follows:

§ 1.338(h)(10)–1 Elective recognition by selling consolidated group of deemed sale gain or loss on target's assets.

(a) *Scope.* This section prescribes rules relating to elections under section 338(h)(10). The primary effect of a section 338(h)(10) election is a deemed taxable sale by target of all its assets followed by a deemed complete liquidation under section 332. In addition, gain or loss on the sale of target stock by a member of the selling consolidated group to a purchasing corporation included in the qualified stock purchase is ignored.

(b) *Nomenclature*—(1) The nomenclature in § 1.338–1 (b) does not apply.

(2) For purposes of this section:

(i) The S group is a selling consolidated group.

(ii) T is a section 338 (h) (10) target. Old T refers to T for periods ending as of the close of T's acquisition date; new T refers to T for subsequent periods.

(iii) T1, T2, etc. are section 338 (h) (10) target affiliates.

(iv) S1, S2, etc. are target affiliates (*i.e.*, members of the S group) other than T, T1, T2, etc.

(v) P, P1, P2, etc. are purchasing corporations and members of a single affiliated group. Unless the context otherwise requires, a reference to P refers to the purchasing corporation or corporations. *See* sections 338 (h) (5) and (8).

(vi) K is a shareholder of T other than a member of the S group or P.

(c) *Definitions*—(1) *Section 338(h)(10) target.* A "section 338(h)(10) target" is a target for which a section 338(h)(10) election is made.

(2) *Section 338(h)(10) target affiliate.* A "section 338(h)(10) target affiliate" is a target affiliate for which a section 338(h)(10) election is made by P.

(3) *Selling consolidated group.* The "selling consolidated group" is the consolidated group that for the taxable period that includes the acquisition date—

(i) Includes the section 338 (h)(10) target, and

(ii) Has as its common parent a corporation for which a section 338 election by P does not apply.

(d) *Section 338 (h) (10) election*—(1) *In general.* A section 338 (h) (10) election may be made for T if P acquires T from the S group in a qualified stock purchase. A section 338 (h)(10) election is irrevocable. If a section 338 (h)(10) election is made for T, a section 338 election is deemed made for T. If a section 338 (h)(10) election for T is not valid, the section 338 election for T is also not valid.

(2) *Simultaneous joint election requirement.* Except as provided in paragraph (d) (3) of this section, a section 338 (h)(10) election is made jointly by P and the S group on Form 8023 in accordance with the instructions to the form. The section 338 (h)(10) election must be made not later than the 15th day of the 9th month beginning after the month in which the acquisition date occurs.

(3) *Delayed elections*—(i) *In general.* A delayed section 338 (h)(10) election ("delayed election") may be made when a section 338 election for target was made before the date target became a section 338 (h) (10) target, *i.e.*, before the date that the affiliated group of which target was a member filed or was required to file a consolidated return. A delay election is made by filing an amended Form 8023 in the manner specified in the form and its instructions.

(ii) *Time for filing.* A delayed election must be filed on or before the date that is the earlier of—

(A) The 30th day after the day the affiliated group of which target was a member files a consolidated return for the period that includes target's acquisition date, or

(B) The 15th day of the 4th month following the close of the S group's taxable year in which the acquisition date occurs.

(e) *Consequences of section 338 (h)(10) election*—(1) *Taxable sale of all T assets.* Old T recognizes gain or loss as if, while a member of the S group, it sold all of its assets in a single transaction as of the close of the acquisition date.

(2) *Nonrecognition treatment for T stock*—(i) *General rule.* For purposes of subtitle A of the Code, gain or loss on the actual sale or exchange by the S group to P of stock of T or of a section 338 (h)(10) target affiliate included in a qualified stock purchase is ignored. Likewise, gain or loss on the deemed sale of stock of a section 338 (h)(10) target affiliate by T or another section 338 (h)(10) target affiliate is ignored.

(ii) *Example.* This paragraph (e)(2) may be illustrated by the following example.

Example. S1 owns all of the T stock and T owns all of the stock of T1 and T2. On March 1, 1992, P makes a qualified stock purchase of T from S1. A section 338 (h) (10) election is made for T. Also, a section 338 (h) (10) election is made for the deemed purchase of T1. A section 338 election is not made for T2. Gain or loss realized by S1 on the actual sale of the T stock is ignored as is T's gain or loss on the deemed sale of the T1 stock. Thus, for example, gain or loss realized on the sale of the T and T1 stock is not taken into account in S1's earnings and profits. However, because a section 338 election is not made for T2, T must recognize any gain realized on the deemed sale of the T2 stock. See § 1.338–3 (c).

(3) *Deemed section 332 liquidation for T.* for purposes of subtitle A of the Code, T is treated as if (at the close of the acquisition date but after the deemed sale of its assets) it distributed all its assets in a complete liquidation to which section 332 applies. Notwithstanding the preceding sentence, new T remains liable for those tax liabilities (including tax liabilities resulting from the deemed sale of its assets) of the other members of the S group that are attributable to taxable years in which those corporations and old T joined in a consolidated return. See § 1.1502–6(a).

(4) *Treatment of unacquired T stock*—(i) *Nonrecognition treatment.* No gain or loss is recognized by K or the members of the S group with respect to their shares of T stock that are not acquired by P as part of the qualified stock purchase ("unacquired stock").

(ii) *Basis to K.* K's basis for its new T stock is the same as K's basis for its unacquired old T stock.

(iii) *Basis to S group.* The basis of the unacquired T stock held by members of the S group equals the net fair market value of the portion of the new T assets that such members would receive were new T to completely liquidate at the beginning of the day after the acquisition date.

(iv) *Net fair market value.* For purposes of this paragraph (e)(4), the net fair market value of new T's assets is the excess of the MADSP amount determined under paragraph (f) of this section for old T assets over new T's liabilities as of the beginning of the day after the acquisition date.

(5) *Cross-references.* (i) P's adjusted grossed-up basis for T is determined in accordance with § 1.338 (b)–1 (c) and is allocated among the T assets in accordance with § § 1.338 (b)–2T and 1.338 (b)–3T.

(iii) The S group may not withdraw, or elect to discontinue filing, a consolidated return on or after the day that a section 338 (h)(10) election is made for a former member of the group. See § 1.1502–75T.

(f) *Deemed sale price*—(1) *General rule.* The price at which each asset of old T is deemed to have been sold is calculated by—

(i) Determining the modified ADSP ("MADSP"), and

(ii) Then allocating MADSP among the assets of old T in accordance with § 1.338 (b)–2T (without regard to § 1.338 (b)–2T(c) (2)).

(2) *Formula.* (i) The MADSP formula is:

MADSP = G + L + X

(ii) For purposes of this formula—

(A) "G" is the grossed-up basis of P's recently purchased T stock determined under § 1.338(b)–1(d).

(B) "L" is the sum of new T's liabilities. See § 1.338 (b)–1 (f).

(C) "X" is other relevant items.

(3) *Cross-reference. See* § 1.338(b)–3T (h) for adjustments to MADSP because of events occurring after the acquisition date.

(g) *Examples.* For purposes of the examples in this paragraph (g), unless otherwise provided, assume T is a member of the S group. T has only one class of stock, all of which is owned by S1. On March 1, 1991, S1 sells its T stock to P for $80,000 and a section 338(h)(10) election is made for T. Paragraphs (e) and (f) of this section may be illustrated by the following examples:

Example 1. (a) On March 1, 1992, assume the following:

Assets	Basis	FMV	Liability
Land	$50,000	$75,000	
Equipment (recomputed basis $70,000)	$30,000	60,000	
Liability			$40,000

(b) The MADSP is as follows:

MADSP = G + L + X
MADSP = $80,000 + $40,000 + 0
MADSP = $120,000

(c) The portion of MADSP allocated to each asset as follows:

MADSP	Basis	FMV	Fraction	Allocable
Land	$50,000	$75,000	5/6	$66,667
Equipment	30,000	60,000	1/6	53,333
Total	80,000	135,000	1	120,000

(d) Because T's assets are all class III assets and the MADSP allocable to each does not exceed its fair market value, T's MADSP is allocated as shown. See § 1.338(b)–2T(c)(1) (relating to fair market value limitation).

(e) Thus, old T has gain on the deemed sale of $40,000 (consisting of $16,667 of capital gain and $23,333 of ordinary income).

(Example 2. (a) The facts are the same as in *Example 1,* except that, as of the close of the acquisition date, old T's current earnings and profits, other than those generated from the deemed sale of its assets, are $21,950. As of the close of 1991, old T had neither accumulated earnings and profits nor a deficit. In addition, old T has no items described in section 381(c).

(b) The consequences to P, T, and S1 include the following:

(i) As determined in *Example 1,* old T recognizes $40,000 of gain on the deemed sale which produces $40,000 of earnings and profits.

(ii) P's basis in new T stock is P's cost for the stock, $80,000.

(iii) The adjusted grossed-up basis of new T is $120,000, *i.e.,* P's cost for the old T stock ($80,000) plus T's liability ($40,000). (Assume there are no other relevant items.) This adjusted grossed-up basis is allocated as basis among the new T assets under §§ 1.338(b)–2T and 1.338(b)–3T.

(iv) Assume that, under § 1.1502–33(d), old T's allocable share of the S group's consolidated tax liability for 1992 (all of which is attributable to the deemed sale of T's assets) is $13,600.

(v) As of the close of the acquisition date but after the deemed sale of its assets, old T's earnings and profits are $48,350, *i.e.,* $21,950 + $40,000 – $13,600.

(vi) S1 takes into account old T's earnings and profits of $48,350, determined as of the close of the acquisition date but after the deemed sale.

(vii) S1 does not recognize gain or loss upon its sale of the old T stock to P.

Example 3. (a) Assume the same facts as in *Example 2,* except that S1 sells 80 percent of the old T stock to P for $64,000.

(b) The consequences to P, T, and S1 are the same as in *Example 2,* except that:

(i) P's basis for the new T stock is P's cost for the stock, $64,000.

(ii) The adjusted grossed-up basis of new T is $120,000 (*i.e.,* $64,000/.8 + $40,000).

(iii) S1 does not recognize gain or loss with respect to the retained stock in T.

(iv) The basis of the T stock retained by S1 is $16,000 (*i.e.,* $120,000 – $40,000 (the net fair market value of T assets as of the beginning of the day after the acquisition date) × .20 (the proportion of T stock retained by S1)).

Example 4. (a) Assume the same facts as in *Example 3,* except that K owns 20 percent of the T stock and these shares are not purchased by P. K's basis in its T stock is $5,000.

(b) The consequences to P, T, and S1 are the same as in *Example 3,* except that:

(i) S1 takes into account 80 percent of T's earnings and profits of $48,350, or $38,680.

(ii) K recognizes no gain or loss and K's basis in its T stock remains at $5,000.

Example 5. (a) Assume that S1 sells all of its T stock to P and that all of the other facts are the same as in *Example 2,* except that the equipment is held by T1, a wholly-owned subsidiary of T. The T1 stock has a fair market value of $60,000. T1 has no other assets and no liabilities other than its share of the S group's consolidated tax liability generated by the deemed sale of the equipment. As of the close of the acquisition date, but before the deemed sale of the equipment, T1 has none of the attributes listed in section 381(c). A section 338(h)(10) election is made for the deemed purchase of T1 stock.

(b) The consequences to T1 include the following:

(i) The MADSP is $53,333 (*i.e.,* $53,333 + $0 + $0).

(ii) T1 recognizes ordinary income of $23,333.

(iii) Assume that, under § 1.1502–33(d), T1's allocable share of the S group's consolidated tax liability for 1992 is $7,933.

(iv) As of the close of the acquisition date, but after the deemed sale of the equipment, T1's earnings and profits are $15,400 (*i.e., $0 + $23,333 – $7,933)*

(c) The consequences to T include the following:

(i) As in *Example 1,* the MADSP for T is $120,000.

(ii) Old T does not recognize gain or loss upon its deemed sale of the T1 stock.

(iii) The MADSP allocable to the land is $66,667 and T recognizes capital gain of $16,667.

(iv) Assume that, under § 1.1502–33(d), old T's allocable share of the S group's consolidated tax liability for 1992 is $5,667.

(v) Old T takes into account old T1's earnings and profits of $15,400, determined as of the close of the acquisition date but after the deemed sale by T1 of its asset.

(vi) As of the close of the acquisition date, but after the deemed sale of its assets, old T's earnings and profits are $48,350, *i.e.,* $21,950 + $15,400 + ($16,667 – $5,667).

(d) The consequences to S1 include the following:

(i) S1 does not recognize gain or loss upon its sale of the old T stock to P.

(ii) S1 takes into account old T's earnings and profits of $48,350, determined as of the close of the acquisition date but after the deemed sale of old T's assets.

(e) P's basis in the new T stock is P's cost for the old T stock, $80,000.

Example 6. (a) The facts are the same as in *Example 5*, except that P already owns 20 percent of the T stock which constitutes nonrecently purchased stock. Assume further that P's basis in the shares of nonrecently purchased T stock is $6,000 and that P paid $64,000 for the 80 percent of old T stock purchased from S1.

(b) The results are the same as in *Example 5*, except that:

(i) S1 takes into account 80 percent of old T's earnings and profits of $48,350, or $38,680, determined as of the close of the acquisition date but after the deemed sale of the T and T1 assets.

(ii) P is deemed to have made a gain recognition election for the nonrecently purchased T stock. As a result, it recognizes gain of $10,000 and P's basis in the nonrecently purchased T stock is increased from $6,000 to $16,000. P's basis in all the T stock is $80,000 (*i.e.*, $64,000 + $16,000). The computations are as follows:

(A) P's grossed-up basis for the recently purchased T stock is $64,000 (*i.e.*, $64,000 (the basis of the recently purchased T stock) × (1 − .2)/(.8) (the fraction in section 338(b)(4)).

(B) P's basis amount for the nonrecently purchased T stock is $16,000 (*i.e.*, $64,000 (the grossed-up basis in the recently purchased T stock) × (.2)/(1.0 − .2) (the fraction in section 338(b)(3)(B)).

(C) The gain recognized on the nonrecently purchased stock is $10,000 (*i.e.*, $16,000 − $6,000).

(h) *Inapplicability of provisions.* The provisions of section 6043 and § 1.332–6 (relating to information returns and record keeping requirements for corporate liquidations) do not apply to the constructive section 332 liquidation of T as provided by paragraph (e) (3) of this section.

§ 1.338 (i)–1 Effective dates.

(a) *In general.* Sections 1.338–1 through 1.338–5, 1.338 (b)–1, and 1.338 (h) (10)–1 are effective for targets with acquisition dates on or after [Insert date final regulations are filed with the **Federal Register**]. For targets with acquisition dates before [Insert date final regulations are filed with the **Federal Register**], *see* §§ 1.338–1T through 1.338–6T, 1.338 (b)–1T, and 1.338 (h) (10)–1T as in effect before [Insert date final regulations are filed with the **Federal Register**].

(b) *MADSP.* Section 1.338 (h) (10)–1 (f), which requires use of the MADSP formula to determine deemed sale price, is effective for qualified stock purchases for which the acquisition date is on or after November 10, 1986, unless the acquisition occurs pursuant to a binding contract entered into before that date.

Par. 7. In the list below, for each section indicated in the left column, remove the wording indicated in the middle column from wherever it appears in that section, and add the wording indicated in the right column.

Affected section	Remove	Add
§ 1.338 (b)–2T (c) (2).	§ 1.338 (b)–1T (f) (2).	§ 1.338 (b)–1 (f) (2)
§ 1.338 (b)–2T (c) (3) (i).	§ 1.338–4T (j) (2).	§ 1.338 (b)–1 (e) (2)
§ 1.338 (b)–2T (c) (3) (ii).	§ 1.338 (b)–1T (c) (1).	§ 1.338 (b)–1 (c) (1)
§ 1.338 (b)–2T (c) (3) (ii).	§ 1.338–4T (h) (3) *Answer 2* (ii).	§ 1.338–3 (d) (2) (ii)
§ 1.338 (b)–2T (d).	§ 1.338 (b)–1T.....	§ 1.338 (b)–1
§ 1.338 (b)–2T (d) *Example (2)* (ii).	paragraph (d) of § 1.338 (b)–1T.	§ 1.338 (b)–1 (d)
§ 1.338 (b)–2T (d) *Example (2)* (iv).	§ 1.338–4T (h)	§ 1.338–3 (d) (2) (ii)
§ 1.338 (b)–3T (a) (1).	§ 1.338 (b)–1T.....	§ 1.338 (b)–1
§ 1.338 (b)–3T (g) (1) (i).	§ 1.338 (b)–1T.....	§ 1.338 (b)–1
§ 1.338 (b)–3T (h) (1) (ii).	§ 1.338–4T (h) or § 1.338 (h) (10)–1T (f) (2).	§ 1.338–3 (d) (or § 1.338 (h) (10)–1 (f)
§ 1.338 (b)–3T (j) *Example (4)* (ii).	§ 1.338–4T (h) (3) *Answer 2* (ii) (B).	§ 1.338–3 (d) (4)
§ 1.338 (b)–3T (j) *Example (6)* (vii).	§ 1.338–4T (h) (3).	§ 1.338–3 (d)
§ 1.338 (b)–3T (j) *Example (7)* (v).	§ 1.338–4T (h) (3).	§ 1.338–3 (d)
§ 1.921–1T (b) (1) A–1	§ 1.338–1T (c).....	§ 1.338–1 (d)

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 92–718 Filed 1–13–92; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

28 CFR Part 65

[INS No. 1449–91; AG Order No. 1553–92]

Emergency Federal Law Enforcement Assistance

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend part 65 of title 28 of the Code of Federal Regulations by adding a new subpart I entitled "Immigration Emergency Fund." This new subpart will establish procedures for State and local governments to obtain reimbursement from the Attorney General, up to a maximum of $20,000,000, from the immigration emergency fund for services provided at the Attorney General's request to aid in the enforcement of United States immigration laws.

DATES: Written comments must be submitted on or before February 13, 1992.

ADDRESSES: Please submit written comments, in triplicate, to Records System Division, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., room 5304, Washington, DC 20536. The envelope and the comments should bear the legend, "Comments on Proposed Amendment to 28 CFR, part 65."

FOR FURTHER INFORMATION CONTACT: Michael J. Coster, Associate General Counsel, Immigration and Naturalization Service, 425 I Street, NW., room 7048, Washington, DC 20536, telephone (202) 514–1260.

SUPPLEMENTARY INFORMATION: This proposed rule implements section 404(b) of the Immigration and Nationality Act (Act) (8 U.S.C. 1101 note), as amended by section 705 of the Immigration Act of 1990, Pub. L. No. 101–649, 104 Stat. 5087 ("IMMACT"), relating to the immigration emergency fund. Previously, section 404(b) authorized an annual appropriation to maintain a balance of $35,000,000 in an immigration emergency fund to provide for an increase in border patrol or other enforcement activities of the Service and to reimburse States and localities for providing immigration assistance as requested by the Attorney General in meeting an immigration emergency. Before the Attorney General could reimburse States and localities, however, section 404(b) required the President to determine that an immigration emergency existed and to certify such fact to the Judiciary Committee of the House of Representatives and of the Senate.

While leaving these authorities unchanged, IMMACT adds a new section 404(b)(2), which authorizes the Attorney General to expend up to $20,000,000 of the immigration emergency fund "for the reimbursement of States and localities providing assistance as required by the Attorney General" in three additional circumstances: whenever an INS district director certifies to the Commissioner that the number of asylum applications filed in the respective district during a calendar quarter exceeds by at least 1,000 the number of such applications filed in that district during the preceding calendar quarter; whenever the lives,

property, safety, or welfare of the residents of a State or locality are endangered; or in any other circumstances as determined by the Attorney General. In these circumstances, section 404(b)(2) eliminates the requirement that the President certify an immigration emergency and requires that the Attorney General make a decision with respect to an application for reimbursement within 15 days after the date of receipt of the application.

This proposed rule establishes the procedures under which States and localities may obtain reimbursement under amended section 404(b)(2) of the Act (8 U.S.C. 1101 note).

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of E.O. 12291, and it does not have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

List of Subjects in 28 CFR Part 65

Grant programs-law, Law enforcement, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, it is proposed to amend part 65 of title 28 of the Code of Federal Regulations as follows:

1. The authority citation for part 65 is revised to read as follows:

Authority: 8 U.S.C. 1101 note; 42 U.S.C. 10501–10513.

2. Part 65 is amended by adding a new subpart I to read as follows:

Subpart I—Immigration Emergency Fund

Subpart I—Immigration Emergency Fund

§ 65.80 General.

These regulations set forth the procedures by which States and localities may seek reimbursement for law enforcement assistance requesting by the Attorney General pursuant to section 404(b)(2) of the Immigration and Nationality Act ("Act"), (8 U.S.C. 1101 note), as amended by section 705 of the Immigration Act of 1990, Public Law 101–649.

§ 65.81 Assistance requested by the Attorney General.

In accordance with the procedures established in § 65.82 of this subpart, the Attorney General may request assistance from a State or local government in enforcing the immigration laws of the United States, and may reimburse those governments for this assistance from the immigration emergency fund, to the extent allowed by law, whenever:

(a) A district director of the Immigration and Naturalization Service ("Service") certifies to the Commissioner of the Service, who shall, in turn, certify to the Attorney General, that the number of asylum applications filed in that director's district during the relevant calendar quarter exceeds by at least 1,000 the number of such applications filed in that district during the preceding calendar quarter;

(b) The Attorney General determines that circumstances involving the administration of the immigration laws of the United States exist which endanger the lives, property, safety, or welfare of the residents of a State or locality; or

(c) The Attorney General determines that other circumstances exist in which it would be appropriate to seek assistance from a State or local government in administering the immigration laws of the United States.

§ 65.82 Procedure for seeking assistance.

(a) When the Attorney General determines to seek assistance from a State or local government under § 65.81 of this subpart, the Attorney General shall negotiate the terms and conditions of that assistance with that government and shall set forth those terms and conditions in a reimbursement agreement.

(b) All such reimbursement agreements shall contain the procedures under which the State or local government is to obtain reimbursement for its assistance. All agreements shall include the title of the official to whom claims are to be submitted, the frequency with which such claims are to be submitted, a description of the supporting documentation to be submitted, and any limitations on the total amount of reimbursement that will be provided.

(c) In exigent circumstances, the Attorney General may agree to reimburse a State or local government without a formal written reimbursement agreement. A reimbursement agreement conforming to the specifications in this section shall be reduced to writing as soon as practicable.

§ 65.83 Procedures for applying for reimbursement.

(a) In the event that the chief executive of a State or local government believes that any of the conditions set forth in § 65.81 of this subpart exists, he or she may apply to the Attorney General on behalf of the State or local government for entry into a reimbursement agreement as described in § 65.82 of this subpart. Each application shall be submitted in writing, and shall set forth all relevant details supporting the application, the nature of the assistance for which the State or local government wishes to be reimbursed, and a jurisdiction for the amount of reimbursement being sought.

(b) If the Attorney General determines that reimbursement under paragraph (a) is appropriate, the Attorney General may enter into a reimbursement agreement with the State or local government in the same manner as if he or she had determined to seek assistance under § 65.81 of this subpart.

(c) The Attorney General shall consider all applications for reimbursement under paragraph (a) of this section in order of receipt until the Attorney General has expended the maximum allowable statutory amount under section 404(b)(2)(B) of the Act. In accordance with section 404(b)(2)(D) of the Act, the Attorney General shall make a decision with respect to an application for reimbursement within 15 calendar days after the date of receipt of the application.

(d) In exigent circumstances, the requirements in this section respecting the form, contents and order of consideration of applications, including the requirement in paragraph (a) that applications be submitted in writing, may be waived by the Attorney General.

Dated: January 3, 1992.

William P. Barr,

Attorney General.

[FR Doc. 92–813 Filed 1–13–92; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 1

RIN 2900–AE13

Group Memorial Monuments

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulations.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its

regulations to provide group memorial monuments. VA currently provides memorial monuments for individual deceased veterans and eligible dependents but not for groups of two or more individuals whose remains have not been recovered or identified. The effect of this amendment is to provide memorial monuments for such groups when members of the group have perished in a common military event, if requested by next of kin. Documentary evidence must be forwarded from the respective branch of service (Departments of Air Force, Army, and Navy, the Coast Guard, and the Marine Corps) historical center to support the request for group memorial monuments.

DATES: Comments must be received on or before February 13, 1992. Comments will be available for public inspection until February 24, 1992. It is proposed to make these regulations effective 30 days after publication of the final rule.

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding this proposed regulation to: Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 170, of the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) until February 24, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. George Vogel, Chief, Program Analysis and Planning Service (403C), Office of Memorial Programs, National Cemetery System, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 275–1206.

SUPPLEMENTARY INFORMATION: VA provides monuments for veterans and eligible dependents and operates under the authority of 38 U.S.C. 2306 and 2400–2407. Under the authority of 38 U.S.C. 2403(b), VA may erect memorial monuments in national cemeteries to individuals or groups of individuals whose remains have never been recovered or identified. Regulations have been published regarding provision of monuments for individuals, but not for groups of individuals whose remains have not been recovered or identified. Under this proposal, VA would be authorized to provide memorial monuments at national cemeteries for such groups when members of the group have perished in a common military event, when requested by next of kin. These group memorial monuments will be in accordance with the policies outlined in 38 U.S.C. 2403 and 38 CFR 1.630.

Executive Order 12291

This proposed regulation is considered nonmajor under the criteria of Executive Order 12291, Federal Regulation. It will not have an annual effect on the economy of $100 million or more; will not result in major increases in costs for consumers, individual industries, Federal, State or local government agencies, or geographic regions; will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The Secretary certifies that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The proposed regulation will concern only a small group of veterans who will be honored by the placement of group memorial monuments in selected national cemeteries. This proposed regulation imposes no regulatory, administrative, or paperwork burdens on any type of small entity.

Catalog of Federal Domestic Assistance Numbers for programs affected by this regulation are 64.200, 64.201 and 64.202.

List of Subjects in 38 CFR Part 1

Administrative practice and procedures, Cemeteries, Claims, Privacy, Security measures.

Approved: November 18, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 1 is proposed to be amended as follows:

PART 1—GENERAL PROVISIONS

1. The authority citation for chapter 1, §§ 1.600 to 1.632 is revised to read as follows:

Authority: 38 U.S.C. 501, unless otherwise noted.

2. In § 1.630, paragraph (c) is revised and an authority citation is added to read as follows:

§ 1.630 Headstones and markers.

* * * * *

(c) A memorial monument furnished for a deceased veteran by the Government may be erected in a private cemetery or in a national cemetery section established for this purpose. The monuments for national cemeteries will be of the standard design authorized for the cemetery in which they are to be erected. In addition to the authorized inscription, the words "In Memory Of" are mandatory.

(Authority: 38 U.S.C. 501)

3. In § 1.631, an authority citation is added at the end of the section to read as follows:

§ 1.631 Eligibility for headstone or marker.

* * * * *

(Authority: 38 U.S.C. 2306)

4. Section 1.633 and its authority citation are added to read as follows:

§ 1.633 Group memorial monuments.

(a) *Definitions of terms.* For the purpose of this regulation, the following definitions apply:

(1) *Group*—all the known and unknown dead who perished in a common military event.

(2) *Memorial Monument*—a monument commemorating veterans, whose remains have not been recovered or identified. Monuments will be selected in accordance with policies established under 38 CFR 1.630.

(3) *Next of kin*—recognized in order: Surviving spouse; children, according to age; parents, including adoptive, stepparents, and foster parents; brothers or sisters, including half or stepbrothers and stepsisters; grandparents; grandchildren; uncles or aunts; nephews or nieces; cousins; and/or other lineal descendent.

(4) *Documentary evidence*—Official documents, records, or correspondence signed by an Armed Services branch historical center representative attesting to the accuracy of the evidence.

(b) The Secretary may furnish at government expense a group memorial monument upon request of next of kin. The group memorial monument will commemorate two or more identified members of the Armed Forces, including their reserve components, who died in a sanctioned common military event, (e.g., battle or other hostile action, bombing or other explosion, disappearance of aircraft, vessel or other vehicle) while in active military, naval or air service, and whose remains were not recovered or identified, were buried at sea, or are otherwise unavailable for interment.

(c) A group memorial monument furnished by VA may be placed only in a national cemetery in an area reserved for such purpose. If a group memorial monument has already been provided under this regulation or by any governmental body, e.g., The American Battle Monuments Commission, to

commemorate the dead from a common military event, an additional group memorial monument will not be provided by VA for the same purpose.

(d) Application for a group memorial monument shall be submitted in a manner specified by the Secretary. Evidence used to establish and determine eligibility for a group memorial monument will conform to paragraph (a)(4) of this section.

(Authority: 38 U.S.C. 501, 2403)

[FR Doc. 92-931 Filed 1-13-92; 8:45 am]
BILLING CODE 8320-01-M

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38 CFR Part 3

RIN 2900-AF60

Burial of Unclaimed Bodies of Veterans

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its rules concerning burial of the unclaimed bodies of certain veterans. The intended effect of the proposal is to allow VA regional office Directors greater flexibility in making burial arrangements when the body of a veteran has not been claimed by friends or relatives.

DATES: Comments must be received on or before February 13, 1992. This amendment is proposed to be effective on the date of publication of the final rule. Comments will be available for public inspection until February 24, 1992.

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this amendment to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments will be available for public inspection only in the Veterans Services Unit, room 170, at the above address, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays), until February 24, 1992.

FOR FURTHER INFORMATION CONTACT: Steven Thornberry, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, N.W., Washington, DC 20420, telephone (202) 233-3005.

SUPPLEMENTARY INFORMATION: It has been VA's longstanding policy to ensure that the unclaimed bodies of veterans receive a proper, dignified burial. VA regional office Directors currently are authorized to arrange for their burial in national cemeteries. Several states, however, do not have national cemeteries or have national cemeteries that are inconvenient to some locations. In these situations, the regional office Directors often incur high costs for transportation of the bodies.

Many states operate cemeteries or cemetery sections used solely for the interment of persons eligible for burial in national cemeteries. Where these cemeteries meet the high standards of operation currently required of national cemeteries, we believe that they would prove to be acceptable alternatives to national cemeteries for burial of unclaimed bodies of veterans. In some cases, burial in state-owned cemeteries could also result in reduced costs to the government by involving lower expenses for transportation of the body.

We, therefore, are proposing to revise 38 CFR 3.1610 to allow regional office Directors greater latitude in arranging for burial of the unclaimed bodies of veterans. The proposed change would allow a regional office Director to pay the cost of transporting unclaimed bodies to certain state-owned cemeteries as well as to national cemeteries, provided that the total amount paid by VA for transportation to and burial in a state-owned facility not exceed the total amount payable if burial had been in a national cemetery. The nonservice-connected plot allowance would be included as part of the total amount payable by VA, but only if entitlement is otherwise established. Under 38 CFR 3.1604(d), payment of this allowance may be made to the states if certain conditions are met.

The rule as proposed would not obligate a state to allow burial, nor would it require that VA regional office Directors arrange for burial in state-owned cemeteries under specific circumstances. The proposal offers an option that may be exercised if an acceptable alternative is available which would not result in greater expense to the government. A regional office Director should exercise discretion in selecting the place of interment and may always arrange for burial in a national cemetery.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), the amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more;

(2) It will not cause a major increase in costs or prices;

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program number is 64.101.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: December 2, 1991.

Edward J. Derwinski,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR part 3 is amended to read as follows:

PART 3—ADJUDICATION

1. The authority citation for part 3, subpart B is amended to read as follows:

Authority: 105 Stat. 386, 38 U.S.C. 501(a), 2302-2308, unless otherwise noted.

2. Section 3.1610 and the section heading are revised, and a new authority citation is added to read as follows:

§ 3.1610 Burial in national cemeteries; burial of unclaimed bodies.

The statutory burial allowance and permissible transportation charges as provided in § 3.1600 through 3.1611 are also payable under the following conditions:

(a) Where burial of a deceased veteran is in a national cemetery, provided that burial in a national cemetery is desired by the person or persons entitled to the custody of the remains for interment and permission for burial has been received from the officers having jurisdiction over burials in national cemeteries; or

(b) where the body of a deceased veteran is unclaimed by relatives or friends (see § 3.1603), the Director of the regional office in the area in which the veteran died will immediately complete arrangements for burial in a national

cemetery or, at his or her option, in a cemetery or cemetery section meeting the requirements of § 3.1604(d)(1)(ii)-(iv), provided that the total amount payable for burial and transportation expenses (including the plot allowance, if entitlement is established) does not exceed the total amount payable had burial been in a national cemetery.
(Authority: 38 U.S.C. 501(a))

* * * * *

[FR Doc. 92-885 Filed 1-13-92; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[FRL-4092-9]

Open Meeting on How To Develop a National Rule on Architectural and Industrial (AIM) Maintenance Coatings

AGENCY: Environmental Protection Agency.

ACTION: Open Meeting—part of convening effort to determine feasibility/desirability of developing a National AIM Coatings Rule by Regulatory Negotiation or some other Consensus-Building process.

SUMMARY: As part of its ongoing convening effort to determine the most effective way to reduce emissions of volatile organic compounds (VOC) from the use of paints and coatings, EPA is announcing a meeting of those affected by the Agency's current plans to develop a Federal rule for coatings that are applied outdoors—AIM Coatings.

The purpose of the meeting is to discuss: data collection needs and how to meet them; the scope, timing, participants, and ground-rules for a negotiation or consensus-building effort; and other issues of concern to affected parties.

DATES: The meeting will start at 9 a.m. and end by 5 p.m. on February 4.

ADDRESSES: The meeting will be held at the Guest Quarters Suites Hotel, 2515 Meridian Parkway, Durham, North Carolina, 27713. (919) 361-4660.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on substantive aspects of the rule should call Ellen Ducey of EPA's Office of Air Quality Planning and Standards, (919) 541-5408, or FTS: 8-629-5408. For further information on administrative matters such as meeting arrangements, please contact Barbara Stinson of the Keystone Center, the AIM co-convenor at 303-468-5822.

Dated: January 9, 1922.

Chris Kirtz,

Director, Consensus and Dispute Resolution Program.

[FR Doc. 92-941 Filed 1-13-92; 8:45 am]
BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB73

Endangered and Threatened Wildlife and Plants; Proposed Threatened Status for the Pacific Coast Population of the Western Snowy Plover

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to determine the Pacific coast population of the western snowy plover (*Charadrius alexandrinus nivosus*) as threatened pursuant to the Endangered Species Act of 1973, as amended (Act). The Pacific coast breeding population of the western snowy plover extends from the State of Washington to Baja California, Mexico, with the majority of breeding birds found in California. These plovers winter primarily in coastal California and Mexico. The Pacific coast population of the western snowy plover is threatened throughout its range in the United States by loss and disturbance of nesting sites. This proposed rule, if made final, would extend the Act's protection to the Pacific coast population of the western snowy plover in the United States and Mexico. The Service seeks data and comments from the public on this proposed rule.

DATES: Comments from all interested parties must be received by March 16, 1992. Public hearing requests must be received by February 28, 1992.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 2800 Cottage Way, room E-1803, Sacramento, California 95825-1846. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Field Supervisor, at the above address or telephone (916) 978-4613; FTS 460-4613.

SUPPLEMENTARY INFORMATION:

Background

Taxonomy

The snowy plover is a small, pale colored shorebird with dark patches on either side of the upper breast. The species was first described in 1758 by Linnaeus (American Ornithologists' Union 1957). Twelve subspecies of the snowy plover occur worldwide (Rittinghaus 1961 *in* Jacobs 1986).

Two subspecies of the snowy plover are recognized in North America (American Ornithologists' Union 1957). These are the western snowy plover (*Charadrius alexandrinus nivosus*) and the Cuban snowy plover (*C. a. tenuirostris*). According to the American Ornithologists' Union (1957), the western snowy plover breeds on the Pacific coast from southern Washington to southern Baja California, Mexico, and in interior areas of Oregon, California, Nevada, Utah, New Mexico, Colorado, Kansas, Oklahoma, and north-central Texas, as well as coastal areas of extreme southern Texas, and possibly extreme northeastern Mexico. Although previously observed only as a migrant in Arizona, small numbers have bred there in recent years (Monson and Phillips 1981 and Davis and Russell 1984 *in* Page *et al.* 1991). The Cuban snowy plover breeds along the Gulf coast from Louisiana to western Florida and south through the Caribbean. The subspecific status of populations breeding east of the Rocky Mountains has been questioned (Johnsgard 1981, Jacobs 1986). These populations are considered to belong more appropriately to the subspecies *tenuirostris*.

The Pacific coast population of the western snowy plover is defined as those individuals that nest adjacent to or near tidal waters, and includes all nesting colonies on the mainland coast, peninsulas, offshore islands, adjacent bays, and estuaries.

The Pacific coast population of the western snowy plover is considered to be distinct from western snowy plovers breeding in the interior (Gary Page, Point Reyes Bird Observatory, pers. comm., 1990). Evidence of intermixing between coastal and interior populations is limited to one documented instance—one banded female hatched at Monterey Bay was observed nesting the following year at Mono Lake, California (Gary Page, *in litt.*, 1989). Three snowy plovers banded as chicks on the California coast were observed at interior Oregon breeding sites during the breeding season in 1990 (Stern *et al.* (1991). No nesting, however, was documented. No breeding plovers banded at Abert Lake, an interior

breeding site in Oregon, were observed breeding at any coastal site (Stern *et al.* 1990).

Life History

The Pacific coast population of the western snowy plover breeds primarily on coastal beaches from southern Washington to southern Baja California, Mexico. Nesting habitat is unstable and ephemeral as a result of unconsolidated soil characteristics influenced by high winds, storms, wave action, and colonization by plants. Other less common nesting habitat includes salt pans, coastal dredged spoil disposal sites, dry salt ponds, and salt pond levees (Widrig 1980, Wilson 1980, Page and Stenzel 1981). Sand spits, dune-backed beaches, unvegetated beach strands, open areas around estuaries, and beaches at river mouths are the preferred coastal habitats for nesting (Stenzel *et al.* 1981, Wilson 1980).

Based on the most recent surveys, a total of 28 snowy plover breeding sites or areas currently occur on the Pacific coast of the United States. Two sites occur in southern Washington—one at Ledbetter Point, in Willapa Bay (Widrig 1980), and the other at Damon Point, in Grays Harbor (Anthony 1985). In Oregon, nesting birds were recorded in six locations in 1990 with three sites (Bayocean Spit, North Spit Coos Bay and spoils, and Bandon State Park-Floras Lake) supporting 81 percent of the total number of nesting birds in coastal Oregon (Oregon Department of Fish and Wildlife, unpubl. data, 1991). A total of 20 plover breeding areas currently occur in coastal California (Page *et. al.* 1991). Eight areas support 78 percent of the California coastal breeding population: San Francisco Bay, Monterey Bay, Morro Bay, the Callendar-Mussel Rock Dunes area, the Point Sal to Point Conception area, the Oxnard lowland, Santa Rosa Island, and San Nicolas Island (Page *et al.* 1991).

Snowy plovers breed in loose colonies with the number of adults at coastal breeding sites ranging from 2 to 381 (Page and Stenzel 1981; Oregon Department of Fish and Wildlife 1990; Eric Cummins, Washington Department of Wildlife, pers. comm., 1991; James Atkinson, U.S. Fish and Wildlife Service, pers. comm., 1991). On the Pacific coast, larger concentrations of breeding birds occur in the south than in the north, suggesting that the center of the plovers' coastal distribution lies closer to the southern boundary of California (Page and Stenzel 1981). If coastal southern California lies in the center of the species distribution, then Baja California may also support substantial breeding populations (Page and Stenzel 1981). Although Wilbur (1987) describes the snowy plover as a common resident of both coasts of the Baja California, only five nesting sites have been verified on the Pacific coast side of the northern province of Baja California (Gary Page, pers. comm., 1991). No quantitative information on nesting colonies has been collected.

Nest sites typically occur in flat, open areas with sandy or saline substrates; vegetation and driftwood are usually sparse or absent (Widrig 1980, Wilson 1980, Stenzel *et al.* 1981). The majority of snowy plovers are site-faithful, returning to the same breeding site in subsequent breeding seasons. Birds often nest in the exact locations as the previous year (Warriner *et al.* 1986).

The breeding season of the coastal population of the western snowy plover extends from mid-March through mid-September. Nest initiation and egg laying occurs from mid-March through mid-July (Wilson 1980, Warriner *et al.* 1986). The usual clutch size is three eggs. Incubation averages 27 days (Warriner *et al.* 1986). Both sexes incubate the eggs.

Plover chicks are precocial, leaving the nest within hours after hatching to search for food. Fleging (reaching flying age) requires an average of 31 days (Warriner *et al.* 1986). Broods rarely remain in the nesting territory until fledging (Warriner *et al.* 1986).

Snowy plovers will renest after loss of a clutch or brood (Wilson 1980, Warriner *et al.* 1986). Double brooding and polygamy (i.e., the female successfully hatches more than one brood in a nesting season with different mates) have been observed in coastal California (Warriner *et al.* 1986) and may also occur in Oregon (Jacobs 1986) After loss of a clutch or brood or successful hatching of a nest, plovers may renest in the same colony site or move, sometimes up to several hundred miles, to other colony sites to nest (Gary Page, pers. comm., 1991; Warriner *et al* 1986).

Widely varying nest success (percentage of nests hatching at least one egg) and reproductive success (number of fledged per female, pair, or nest) are reported in the literature. Nest success ranges from 0 to 80 percent for coastal snowy plovers (Widrig 1980, Wilson 1980, Saul 1982, Wilson-Jacobs and Dorsey 1985, Wickham unpub. data *in* Jacobs 1986, Warriner *et al.* 1986). Instances of low nest success have been attributed to a variety of factors, including predation, human disturbance, and inclement weather conditions. Reproductive success ranges from 0.05 to 2.40 young fledged per female, pair or nest (Page *et al.* 1977, Widrig 1980, Wilson 1980, Saul 1982, Warriner *et al.* 1986, Page 1988). Page *et al.* (1977) estimated that snowy plovers must fledge 0.8 young per female to maintain a stable population. Reproductive success falls far short of this threshold at many nesting sites (Widrig 1980, Wilson 1980, Warriner *et al.* 1986, Page 1988, Page 1990).

The coastal population of the western snowy plover consists of both resident and migratory birds. Some birds winter in the same areas used for breeding (Warriner *et al.* 1986, Wilson-Jacobs, pers. comm. *in* Page *et al.* (1986). Other birds migrate either north or south to wintering areas (Warriner *et al.* 1986). Plovers occasionally winter in southern coastal Washington (Brittell *et al.* 1976). Up to 100 plovers may winter in Oregon, primarily on 3 beach segments (Page *et al.* 1986, Oregon Department of Fish and Wildlife 1990). The majority of birds, however, winter from Bodega Bay, California, south (Page *et al.* 1986). Wintering plovers occur in widely scattered locations on both coasts of Baja California and significant numbers have been observed on the mainland coast of Mexico at least as far south as San Blas, Nayarit (Page *et al.* 1986). Many interior birds west of the Rocky Mountains winter on the Pacific coast (Page *et al.* 1986). Birds winter in habitats similar to those used during the nesting season.

Snowy plovers forage on invertebrates in the wet sand and amongst surf cast kelp within the intertidal zone; in dry, sandy areas above the high tide; on salt pans; and along the edges of salt marshes and salt ponds. Little quantitative information is available on food habits (Reader 1951).

Poor reproductive success, resulting from human disturbance, predation, and inclement weather, combined with permanent or long-term loss of nesting habitat to urban development and encroachment of introduced European beachgrass (*Ammophila arenaria*) has led to a decline in active nesting colonies as well as an overall decline in the breeding and wintering population of the western snowy plover along the Pacific coast of the United States

Petition Background

On March 24, 1988, the Service received a petition from Dr. J.P. Myers of the National Audubon Society to list the Pacific coast population of the western snowy plover as a threatened species under the Act. On November 14, 1988, the Service published a 90-day petition finding (53 FR 45788) that substantial information had been presented

indicating the requested action may be warranted. At that time, the Service acknowledged that questions pertaining to the demarcation of the subspecies and significance of interchange between coastal and interior stocks of the subspecies remained to be answered. Public comments were requested on the status of the coastal population of the western snowy plover. A status review of the entire subspecies has been in progress since the Service's December 30, 1982, Vertebrate Notice of Review (47 FR 58454). In that notice, as in subsequent notices of review (September 18, 1985 (50 FR 37958); January 6, 1989 (54 FR 554)), the western snowy plover was included as a category 2 candidate. Category 2 candidates are species for which information now in possession of the Service indicates that proposing to list as endangered or threatened is possibly appropriate, but for which conclusive data on biological vulnerability and threat are not currently available to support proposed rules. The public comments period on the petition was closed on July 11, 1989 (54 FR 26811, June 26, 1989). The Service completed a status report on the western snowy plover in September 1989. Based on the best scientific and commercial data available and other comments submitted during the status review, the Service made a 12-month petition finding on June 25, 1990, that the petitioned action was warranted, but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Publication of this proposed rule constitutes the final finding on the petitioned action.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424) set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 49(a)(1). These factors and their application to the Pacific coast population of the western snowy plover (*Charadrius alexandrinus nivosus)* are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Historic records indicate that nesting western snowy plovers were once more widely distributed in coastal California, Oregon, and Washington than they are currently. In coastal California, snowy plovers bred at 53 locations prior to 1970 (Page and Stenzel 1981). Since that time, no evidence of breeding birds has been found at 33 of these 53 sites, representing a 62 percent decline in breeding sites (Page and Stenzel 1981). The greatest losses of breeding habitat were in southern California, within the central portion of the snowy plover's coastal breeding range. In Oregon, snowy plovers historically nested at 29 locations on the coast (Charles Bruce, Oregon Department of Fish and Wildlife, pers. comm., 1991). In 1990 only six nesting colonies remained, representing a 79 percent decline in active breeding sites. In Washington, snowy plovers formerly nested in at least five sites on the coast (Eric Cummins, pers. comm., 1991). Today only two colony sites remain active, representing, at minimum, a 60 percent decline in breeding sites.

In addition to loss of nesting sites, declines in the overall breeding population also have been documented in Oregon and California. Breeding season surveys of the Oregon coast from 1978 to 1990 show that the number of adult snowy plovers has declined significantly at an average annual rate of about 6 percent (calculated from Oregon Department of Fish and Wildlife data). The average number of adults has declined from 90 to 57 over this time period (Oregon Department of Fish and Wildlife 1990). If the current trend continues, breeding snowy plovers could disappear from coastal Oregon within the next 10 years. In 1981, the coastal California breeding population of snowy plovers was estimated to be 1,565 adults (Page and Stenzel 1981). In 1989, surveys revealed 1,386 plovers (Page *et al.* 1991), an 11 percent decline in the breeding population. The population decline in California may be greater than indicated. The 1989 survey results are considered more reliable than the earlier estimates which may have underestimated the overall population size (Gary Page, pers. comm., 1991).

Although there are no historic data for Washington, it is doubtful that the snowy plover breeding population in Washington was ever very large (Brittell *et al.* 1976). However, loss of nesting sites in this State probably has resulted in a reduction in their overall population size. In recent years, less than 30 birds have nested on the southern coast of Washington (James Atkinson, pers. comm. 1990; Eric Cummins, pers. comm., 1991).

Survey data also indicate a decline in wintering snowy plovers particularly in southern California. The number of snowy plovers observed during Christmas Bird Counts from 1962 to 1984 significantly decreased in southern California despite an increase in observer participation in the counts (Page *et al.* 1986). This observed decline was not accompanied by a significant loss of wintering habitat over the same time period (Page *et al.* 1986).

Human activity (e.g., walking, jogging, running pets, horseback riding, off-road vehicle use, and beach raking) is believed to be a primary factor in these observed declines in snowy plover coastal breeding sites and breeding populations in California, Oregon, and Washington. Snowy plovers also are subjected to similar high levels of human disturbance at nesting sites in Baja California, Mexico (Barbara Massey, Proesteros, pers. comm., 1990; Daniel Anderson, University of California, Davis, pers. comm., 1990). With 81 percent of the Oregon snowy plover population supported at three of six remaining nesting sites and 78 percent of the California population breeding in eight areas, loss of just a few of these sites could dramatically reduce the coastal plover population.

The nesting season of the western snowy plover (mid March to mid September) coincides with the season of greatest human use of beaches of the west coast (Memorial Day through Labor Day). Human activities of particular detriment to nesting snowy plovers include unintentional disturbance and trampling of eggs and chicks by people (Stenzel *et al.* 1981, Warriner *et al.* 1986), off-road vehicle use (Widrig 1980, Stenzel *et al.* 1981, Anthony 1985, Warriner *et al.* 1986, Page 1988), horseback riding (Woolington 1985, Page 1988), and beach raking (Stenzel *et al.* 1981). Page *et al.* (1977) found that snowy plovers were disturbed more than twice as often by such human activities than all other natural causes combined.

Intensive beach use by humans results in abandonment of nesting sites or reductions in nesting density or nesting success. In southern California where human activity on beaches is extensive, plover nesting is restricted to managed preserves. The disappearance of nesting plovers at South Beach on the Oregon coast coincided with opening of a new State park adjacent to the beach (Wilson 1980). Nipomo Dunes beach in southern California, which receives high human use, including significant off-road vehicle activity, supported one-fifth the density of plover nests as occurred at Point Purisima beach, within Vandenberg Air Force Base (closed to public use) (Sentzel *et al.* 1981). This relationship held true even though nesting habitat at Nipomo Dunes was of higher quality than that of Point

Purisima. Hatching success was found to be much lower on Zmudowski State Beach in Monterey County, California, than on an undisturbed salt pan just 1 kilometer (km) away (Warriners, unpubl. data *in* Page and Stenzel 1981).

In the few instances where human intrusion into snowy plover nesting areas has been precluded either through area closures or by natural events, nesting success has improved. The average number of young fledged per nesting pair increased from 0.75 to 2.00 after the nesting site at Leadbetter Point, Washington, was closed to human activities (Saul 1982). Similarly, vehicle closure on a portion of Pismo Beach, California, led to an eight-fold increase in the nesting plover population (W. David Shuford, Point Reyes Bird Observatory, *in litt.*, 1989). Fledging success increased 16 percent at Moss Landing Beach, California, after beach access was virtually eliminated by the 1989 earthquake (Page 1990).

When beach visitors travel through plover nesting areas, plovers flush repeatedly. Incubating plovers at Point Reyes left their nests in response to human activity 65 to 78 percent of the time when disturbances occurred within 100 meters (m) or less or nests (Page *et al.* 1977). Dogs intimidated plovers even more, with plovers flushing more frequently and remaining off their nests significantly longer when disturbed by people with dogs versus people without dogs (Page *et al.*, 1977).

Prolonged absences from the nest and the subsequent longer incubation period increase the likelihood of nest failures by prolonging exposure of eggs and nesting birds to predators (Page *et al.* 1983) and other detrimental factors. High levels of human disturbance also may increase check mortality by altering chick behavior. Frequently disturbed piping plover chicks fed less often and at a reduced rate (Flemming *et al.* 1988). Fewer chicks survived to 17 days in areas heavily disturbed by humans. Human disturbance also may increase exposure of eggs or chicks to inclement weather. In an attempt to avoid intruders, adult snowy plovers have been observed leaving chicks wet and unattended in the rain (Wilson 1980) and allowing wind blown sand to bury their eggs (Charles Bruce, pers. comm., 1991). Prolonged absences from the nest on sunny days may result in overheating of the eggs.

In addition to indirect effects, direct losses of chicks and adults also result from human activities. In the Monterey Bay area, two males were found run over on their nests (J.P. Myers, National Audubon Society, *in litt.*, 1988). Chicks and adults are particularly vulnerable because of their habit of crouching in depressions, such as tire tracks or footprints. Vehicle tracks have been noted in nesting areas at a number of beaches, including Damon Point (Anthony 1985) and Leadbetter Point (Widrig 1980) in Washington; New River (Wickham 1981) and Coos Bay (Oregon Department of Fish and Wildlife 1990) in Oregon; and Point Reyes (Page 1988) and the Pajaro River mouth (Warriner *et al.* 1986) in California. On military bases, such as Camp Pendleton in California, plovers are directly and indirectly affected by military training exercises on the beach (Loren Hays, U.S. Fish and Wildlife Service, pers. comm., 1991).

In all of Los Angeles County and parts of Orange County, California, entire beaches are raked on a daily to weekly basis to remove trash and tidal debris. Even if human activity was low on these beaches, grooming activities completely preclude the possibility of successful nesting attempts (Stenzel *et al.* 1981). Plover food availability on raked beaches also may be depressed for both breeding and wintering birds, because surf cast kelp and associated invertebrates are removed and the upper centimeter of the sand substrate is disturbed (J.P. Myers, *in litt.*, 1988).

Habitat destruction is also an important factor contributing to the loss of snowy plover breeding sites. The construction of residential and industrial developments, and recreational facilities, including placement of access roads, parking lots, summer homes, and supportive services, have permanently eliminated valuable nesting habitat on southern Washington (Brittell *et al.* 1976), Oregon (Oregon Department of Fish and Wildlife 1990), and California beaches (Page and Stenzel 1981). Snowy plover use of man-made habitat, such as salt evaporators and dredged spoil sites, apparently has not compensated for loss or degradation of habitat in other areas (Page and Stenzel 1981).

Another important factor contributing to habitat loss for coastal breeding snowy plovers is encroachment of European beachgrass (*Ammophila arenaria*). This non-native plant was introduced to the west coast around 1989 to stabilize dunes (Wiedemann 1987). Since then it has spread up and down the coast and now is found from British Columbia to southern California (Ventura County). Stabilizing sand dunes with European beachgrass has reduced the amount of unvegetated area above the tideline, decreased the width of the beach, and increased its slope. These changes have reduced the amount of potential snowy plover nesting habitat on many beaches. It is currently a major dune plant at about 50 percent of California breeding sites and all of those in Oregon and Washington (J.P. Myers, *in litt.*, 1988). The presence of beachgrass may also adversely affect plover food supplies. The abundance and diversity of sand dune arthropods are markedly depressed in areas dominated by European beachgrass (Slobodchikoff and Doyen 1977).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Egg collecting has been observed at several California nesting colonies (Stenzel *el al.* 1981, Warriner *et al.* 1986). The significance of this factor on nesting success is unknown.

C. Disease or Predation

Western snowy plover eggs, chicks, and adults are taken by a variety of avian and mammalian predators. These losses, particularly to avian predators, are exacerbated by human disturbances. Of the many predators, American crows (*Corvus brachyrhynchos*), ravens (*C. corax*), and red fox (*Vulpes vulpes*) have had a significantly adverse affect on reproductive success at several colony sites. Because crows and ravens, in particular, thrive in urban/agricultural areas, present-day coastal populations of these species are probably greater than historic populations. At nesting sites on the Oregon coast, nest losses of up to 68 percent have been attributed to crows and ravens (Wilson-Jacobs and Meslow 1984). Ravens were also significant predators at a Point Reyes breeding site, destroying 67–69 percent of the clutches in 1988–1989 (Page 1988, Page 1990). In recent years, concern has increased regarding loss of snowy plover nests to the introduced eastern red fox. The fox apparently now occurs throughout the Monterey Bay area (John and Jane Warriner, Point Reyes Bird Observatory, *in litt.*, 1989), in San Francisco Bay (Leora Feeney, Biological Field Services, pers. comm., 1991), and in Orange County, California (Gary Page, *in litt.*, 1988). At the Marina breeding site in Monterey Bay, red fox destroyed 45 percent of the nests in 1988 (Page 1988). This predator was also the likely cause of nest failures at least at three other breeding sites in Monterey Bay in 1989–1990 (Page 1990). In the Salinas River area, the number of chicks fledged between 1984 and 1989 was reduced by 75 percent as red fox expanded into the area (John and Jane Warriner, *in litt.*, 1989).

Although predation represents an important mortality factor at several colony sites, the significance of

predation on the overall coastal population of the snowy plover is unknown. Nevertheless, this factor remains an issue of concern.

D. The Inadequacy of Existing Regulatory Mechanisms

The western snowy plover is protected by the Federal Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*) and by State law as a nongame species. The plover's breeding habitat, however, is not protected by these laws. In the State of Washington, the western snowy plover was listed as an endangered species in 1981 by the Wildlife Commission. This designation, however, does not provide for consultation between the Department of Wildlife and other State agencies regarding impacts of proposed projects on the snowy plover. Preparation of a management plan for the snowy plover is not required under State law. There are also no penalties imposed under Washington law for take of endangered species' habitat. In Oregon, the plover was listed as a threatened species in 1975. The Oregon Threatened and Endangered Species Act of 1987 requires other State agencies to consult with the Department of Fish and Wildlife. The State Act, however, does not provide adequate protection for either the birds or their habitat. A management plan for the snowy plover in Oregon is currently being developed (Oregon Department of Fish and Wildlife 1990). Although protective measures are being implemented on an experimental basis at some nesting sites (Charles Bruce, pers. comm., 1990) and many beaches have been closed to vehicles, a comprehensive conservation program has yet to be implemented in this State. In California, where the majority of nesting occurs, the snowy plover is classified as a "Species of Special Concern" (Remsen 1978). This designation provides no special, legally mandated protection. Snowy plovers have no protective status in Mexico.

The Clean Water Act (section 404) and the Rivers and Harbors Act (section 10) are the primary Federal laws that could provide some protection of nesting and wintering habitat of the western snowy plover that is determined by the U.S. Army Corps of Engineers (Corps) to be wetlands or navigable waters of the United States. These laws, however, do not afford any special protection for candidate species, and would apply to only a small fraction of the nesting and wintering areas of the western snowy plover on the Pacific coast.

In 1985, the Nongames Program of the Service prepared management guidelines for the western snowy plover (Fish and Wildlife Service 1985), which included strategies to reduce human disturbance at nesting sites and prevent structural alteration of breeding habitat. Some management actions have been carried out since publication of the guidelines, but major strategies have yet to be implemented.

E. Other Natural or Man-Made Factors Affecting its Continued Existence

Because the majority of snowy plover nesting sites occur in unstable sandy substrates, nest losses caused by weather-related natural phenomena commonly occur. Events such as extreme high tides (Wilson 1980, Stenzel *et al.* 1981, Warriner *et al.* 1986, Page 1988), river flooding (Stenzel *et al.* 1981), and heavy rain (Wilson 1980, Warriner *et al.* 1986, Page 1988) have been reported to destroy or wash away individual nests as well as entire colony sites. Winddriven sand contributes to nest failure by burying eggs (Wilson 1980, Stenzel *et al.* 1981, Warriner *et al.* 1986). The percentage of total nest losses attributed to weather-related phenomena has varied from 15 to 38 percent (Wilson 1980, Warriner *et al.* 1986, Page 1988). Although natural phenomena contribute significantly to nest failures at some plover breeding sites, the significance of this factor on the overall coastal breeding population is unknown.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the Pacific coast population of the western snowy plover in determining to issue this proposed rule. Based on this evaluation, the preferred action is to list the Pacific coast population of the western snowy plover (*Charadrius alexandrinus nivosus*) as threatened. This population of the western snowy plover is threatened by loss and modification of nesting habitat resulting from human development of the coast, encroachment of European beachgrass, and extensive human recreational use of nesting areas. Predation, which is often exacerbated by human disturbance, poses a significant threat to a number of nesting colonies. The Act's definition of an endangered species is a species which is in danger of extinction throughout all or a significant portion of its range. A threatened species is a species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Because the center of the breeding range of the coastal population is in California where the numbers of breeding birds are greater and have not declined as dramatically as in Washington and Oregon, the Service believes the snowy plover is not currently in danger of extinction. However, the population is likely to become in danger of extinction in the foreseeable future if the impacts analyzed in this proposed rule continue. Thus the Pacific coast population of the western snowy plover fits the Act's definition of threatened. Critical habitat is not determinable at this time for reasons discussed in the "Critical Habitat" section of this rule.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat concurrently with determining a species to be endangered or threatened. The Service finds that designation of critical habitat is not presently determinable for the Pacific coast population of the western snowy plover. The Service's regulations (50 CFR 424.12(a)(2)) state that critical habitat is not determinable if information sufficient to perform required analyses of the impacts of the designation is lacking or if the biological needs of the species are not sufficiently known to permit identification of an area of critical habitat. Critical habitat is defined as "specific areas within the geographical area currently occupied by a species * * * on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection * * * " (50 CFR 424.02(d)).

The breeding and wintering range of the coastal population of the western snowy plover is extensive, discontinuously covering over 1,930 km (1,200 miles) of coastline in the United States. Designation of critical breeding habitat is complicated by the ephemeral nature of the substrate at many of the colony sites, movements of breeding birds among colony sites, and lack of information on the value of adjacent tide flats, salt marshes, lagoons, rivers, and salt ponds in maintaining breeding birds. Although nesting sites of the western snowy plover have been carefully documented, very few of the 28 coastal nesting areas have been studied sufficiently to determine exactly where broods move to feed during the fledgling stage. In the absence of this information, the conservative approach would be to designate entire stretches of beach as critical habitat. Accurate information on brood movements, however, would allow for refinement of critical habitat boundaries and a better understanding of how human activities can be

successfully integrated during the breeding season. The relative importance of specific wintering habitat sites to maintenance of the coastal population of the subspecies also has not been determined at this time. The Service will work with plover experts to collect and refine information on the physical and biological features of plover habitat that are essential to conservation of the species and which may require special management considerations or protection. Analyses have not been conducted on the impacts of designating critical breeding or wintering habitat.

During the proposed comment period, the Service will seek additional agency and public input on critical habitat, along with information on the biological status of and threats to the snowy plover. The Service intends to use this and other information in order to make a determination on a proposed designation of critical habitat.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and all the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal agencies that may be involved as a result of this proposed rule are the Service, Bureau of Land Management, National Park Service, U.S. Forest Service, and the Departments of the Army (including the Corps of Engineers (Corps)), Navy, and Air Force. In California, approximately 34 percent of the breeding plover population occurs on Federal lands (J.P. Myers, *in litt.*, 1988). At least 50 percent of breeding habitat is under Federal agency jurisdiction in Oregon (J.P. Myers, *in litt.*, 1988). In Washington, the breeding site at Leadbetter Point is within a National Wildlife Refuge.

On most Federal land containing active breeding sites, few measures have been implemented specifically to protect snowy plovers. In a few areas in California, plovers have benefitted somewhat from protective measures taken for the endangered California least tern (*Sterna antillarum browni*). At Vandenberg Air Force Base in southern California, beaches are closed to all foot and vehicular traffic during the least tern nesting season (Donna Brewer, U.S. Fish and Wildlife Service, pers. comm., 1991). Dogs and cattle have been restricted from some beaches at Point Reyes National Seashore (Gary Page, pers. comm., 1991), and some beaches on Federal land in Oregon have been closed to vehicles to protect plovers and other wildlife (Charles Bruce, pers. comm., 1991). Leadbetter Point in Washington (Fish and Wildlife Service) and a 10-acre spoil disposal site in Coos Bay in Oregon (Bureau of Land Management) are the only nesting sites where human access is restricted specifically for plover nesting. Most other nesting areas on Federal land, with the exception of military bass, have unrestricted human access all year. Access improvements for recreational purposes are ongoing at several beaches. At Coos Bay, Oregon, where the largest coastal Oregon plover colony occurs, several recreational facilities, including off-road vehicle access and campgrounds are proposed on Bureau of Land Management land (Bureau of Land Management 1989).

Because human disturbance is a primary factor affecting snowy plover reproductive success, any of the above mentioned Federal agencies would be required to consult with the Service if any action they fund, authorize, or carry out may affect the coastal population of the western snowy plover.

As discussed above, some western snowy plover nesting and wintering habitat may be regulated by the Corps under section 10 of the Rivers and Harbors Act and section 404 of the Clean Water Act. If a proposed project may affect the western snowy plover, the Corps would be required to consult with the Service under section 7 of the Act.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife not covered by a special rule. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any such species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits for threatened species not covered by a special rule are at 50 CFR 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. There are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

If the western snowy plover is listed under the Act, the Service will review it to determine whether it should be placed upon the Annex of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, which is implemented through section 8(A)(e) of the Act, and whether it should be considered for other appropriate international agreements.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited.

Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this subspecies;

(2) The location of any additional populations of this subspecies;

(3) Additional information concerning the range, distribution, and population size of this species;

(4) Current or planned activities in the subject area and their possible impacts on this subspecies;

(5) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(6) Constituent habitat elements critical for the conservation of the coastal population of the western snowy plover;

(7) The location of additional nesting or wintering areas, including areas in Baja California, Mexico;

(8) The location of areas important for other life history stages, especially feeding areas, and the relative value of such areas in maintaining breeding birds;

(9) Any foreseeable economic and other impacts resulting from a proposed critical habitat designation; and

(10) Economic values associated with benefits of designating critical habitat for this subspecies. Such benefits include those derived from non-consumptive uses (birdwatching, beachwalking, photography, etc.).

Any final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor (see **ADDRESSES** section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Field Supervisor (see **ADDRESSES** section).

Author

The primary author of this proposed rule is Karen J. Miller, U.S. Fish and Wildlife Service, Fish and Wildlife Enhancement, Sacramento Field Office, 2800 Cottage Way, room E–1803, Sacramento, California 95825–1846 (916/978–4613) or FTS 460–4613).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1554; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. It is proposed to amend § 1711(h) by adding the following, in alphabetical order under Birds, to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
•	•	•	•	•	•	•	
BIRDS							
•	•	•	•	•	•	•	
Plover, western snowy.	*Charadrius alexandrinus nivosus.*	U.S.A. (CA, OR, WA, NV, AZ, UT, CO, NM, TX, OK, KS); Mexico.	U.S.A. (CA, OR, WA); Mexico (Baja CA) (Pacific coast population only).	T		NA	NA
•	•	•	•	•	•	•	

Dated: January 6, 1992

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 92–897 Filed 1–14–92; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 57, No. 9
Tuesday, January 14, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

Lakeside Elementary Critical Area Treatment RC&D Measure Plan, West Virginia; Finding of No Significant Impact

AGENCY: U.S. Department of Agriculture, Soil Conservation Service.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines, (40 CFR part 1500); and the Soil Conservation Service Guidelines, (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Lakeside Elementary Critical Area Treatment RC&D Measure Plan, Putnam County, West Virginia.

FOR FURTHER INFORMATION CONTACT: Rollin N. Swank, State Conservationist, Soil Conservation Service, 75 High Street, room 301, Morgantown, West Virginia 26505, Telephone (304) 291–4151.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Rollin N. Swank, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

Notice of a Finding of No Significant Impact

The purpose of the measure is critical area treatment for erosion control. The measure is designed to stabilize by regrading, shaping, and revegetating approximately 1 acre of land that has an average erosion rate of 75 tons per acre per year. Conservation practices include vegetated diversion, land smoothing, seeding, and mulching.

Lakeside Elementary Critical Area Treatment RC&D Measure Plan, Putnam County, West Virginia

The Notice of a Finding of No Significant Impact has been forwarded to the Environmental Protection Agency and to various Federal, State and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Rollin N. Swank, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

"This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials."

Dated: December 19, 1991.

Rollin N. Swank,

State Conservationist.

[FR Doc. 92–905 Filed 1–13–92; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 549]

Resolution and Order Approving the Application of the City of Fort Wayne, IN for a Foreign-Trade Zone in Fort Wayne, IN; Proceedings of the Foreign-Trade Zones Board, Washington, DC

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the City of Fort Wayne, Indiana, filed with the Foreign-Trade Zones Board on September 4, 1990, and amended on February 22, 1991, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Fort Wayne, Indiana, adjacent to the Fort Wayne Customs user fee airport, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to § 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the City of Fort Wayne, Indiana, has made application (filed September 4, 1990, FTZ Docket 38–90, 55 FR 38373; and amended on February 22, 1991, 56 FR 8740) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone in the Fort Wayne, Indiana, area, adjacent to the Fort Wayne Customs user fee port facility;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, Therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 182, at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also the following express conditions and limitations:

Activation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from federal, state, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone site in the performance of their official duties.

The grant does not include authority for manufacturing operations, and the Grantee shall notify the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In Witness Whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, DC, this 23 day of December 1991, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Robert A. Mosbacher,

Secretary of Commerce, Chairman and Executive Officer.

[FR Doc. 92-951 Filed 1-13-92; 8:45 am]

BILLING CODE 3510-DS-M

[Docket 83-91]

Proposed Foreign-Trade Zone—Fort Worth, Texas, Area Application

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Alliance Corridor, Inc. (a Texas non-profit corporation), requesting authority to establish a general-purpose foreign-trade zone in the Alliance Corridor area between Fort Worth and Denton, Texas, adjacent to the Dallas-Fort Worth Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 6, 1991. The applicant is authorized to make the proposal under Article 1446.01, Vernon's Annotated Texas Statutes.

The proposed Alliance Corridor zone project would become the fourth general-purpose zone project in the Dallas-Fort Worth Customs port of entry area. The existing zones in th area are: FTZ 39 at the DFW International Airport (Grantee: Dallas-Fort Worth Regional Airport Board, FTZ Board Order 133, 43 FR 37478, 8/23/78); FTZ 113 at the Mid-Texas International Center in Midlothain (Grantee: Midlothian Trade Zoned Corporation, Board Order 283, 50 FR 300, 1/3/85); and, FTZ 168 at three industrial parks in the Dallas-Fort Worth area (Grantee: Dallas-Fort Worth Maquila Trade Development Corporation, FTZ Board Order 491, 55 FR 46974, 11/8/90).

The proposed new general-purpose zone would consist of 4 sites (9,700 acres) within the Alliance Corridor project (17,000 acres), a master-planned development located along a 20-mile stretch of I–25W between the Cities of Fort Worth and Denton, Texas. Site 1 (Alliance Center, 4,470 acres) is a business and industrial development located at the Alliance Airport on Interstate 35W in the Cities of Fort Worth and Haslet, Texas, some 17 miles north of downtown Fort Worth. Site 2 (Alliance Gateway, 1,900 acres) is within a 2,600-acre commercial, industrial and distribution development located along State Highway 170 between Interstate 35W and State Highway 114 in Fort Worth and Roanoke, Texas, 15 miles north of downtown Fort Worth. Site 3 (Northlake, 1,600 acres) is located at Interstate 35W and State Highway 114 in the City of Northlake, Texas. Site 4 (Hunter Ranch, 1,600 acres) is within a 3,350-acre mixed-use development located in Denton, Texas, on Interstate 35W, approximately 5 miles south of downtown Denton, and 10 miles north of the Alliance Airport.

The development of the Alliance Corridor project involves a partnership of state/local/federal officials and private industry, including the Perot Group. Its central point is the new Alliance Airport which was completed and opened in 1989 as a general aviation airport and international air cargo facility. The four sites involved in the zone project are owned by affiliates of Hillwood Development Corporation, except for a few parcels owned by private users. Alliance Trade Authority, Inc., has been designated as zone operator.

The application indicates a need for additional zone services in the Dallas-Fort Worth area to serve the development needs of the Alliance Corridor. Several firms have indicated an interest in using zones procedures for processing, sorting, assembly, display and warehousing such items as aircraft, welding machines and special alloy welding supplies. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Donna De La Torre, Director, Office of Inspection and Control, U.S. Customs Service, Southwest Region, 5850 San Felipe Street, Suite 500, Houston, Texas 77057–3012; and Colonel John A. Mills, District Engineer, U.S. Army Engineer District, Fort Worth, P.O. Box 17300, Fort Worth, Texas 76102–0300.

Comments concerning the proposed zone are invited in writing from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before March 16, 1992. While no local public hearing has been scheduled for the FTZ Board, consideration will be given to such a hearing during the review.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, 1100 Commerce Street, room 7A5, Dallas, Texas 75242.
Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: January 8, 1992.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 92-952 Filed 1-13-92; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-122-047]

Elemental Sulphur From Canada; Final Results of Antidumping Duty Administrative Review and Revocation in Part

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review and revocation in part.

SUMMARY: On September 26, 1991, the Department of Commerce published the preliminary results of its antidumping duty administrative review and intent to revoke in part the antidumping finding on elemental sulphur from Canada. The review covers one exporter, Sulco Chemicals, Ltd. (Sulco), and the period December 1, 1989 through November 30, 1990.

We gave interested parties an opportunity to comment on our preliminary results and intent to revoke in part. We received no comments. Our final results are unchanged from the preliminary results, and we revoke the antidumping finding in part with respect to Sulco.

EFFECTIVE DATE: January 14, 1992.

FOR FURTHER INFORMATION CONTACT: Dennis U. Askey or Melissa G. Skinner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-4851.

SUPPLEMENTARY INFORMATION:

Background

On September 26, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 48777) the preliminary results of antidumping duty administrative review and intent to revoke in part the antidumping finding on elemental sulphur from Canada (38 FR 35655, December 17, 1973). On July 13, 1991, the Department verified Sulco's questionnaire response. The Department received no comments concerning this administrative review. We have now completed this administrative review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act).

Scope of the Review

Imports covered by the review are shipments of elemental sulphur from Canada. During the review period such merchandise was classifiable under Harmonized Tariff System (HTS) item 2501.01.00. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one exporter of Canadian elemental sulphur to the United States, Sulco, and the period December 1, 1989 through November 30, 1990.

United States Price

We based United States price (USP) on purchase price (PP), in accordance with section 772(b) of the Tariff Act, because all sales were made directly to unrelated parties prior to importation into the United States. We calculated PP based on unpacked f.o.b. refinery or delivered prices to unrelated customers in the United States. We made adjustments, were appropriate, for foreign inland freight, demurrage, brokerage and handling expenses, and credit costs. No other adjustments were claimed or allowed.

Foreign Market Value

We based foreign market value (FMV) on home market prices to unrelated parties, in accordance with section 773 of the Tariff Act. We calculated FMV based on unpacked f.o.b. refinery or delivered prices to unrelated customers in the home market. We made adjustments, were appropriate for inland freight, demurrage, and credit costs. No other adjustments were claimed or allowed.

Final Results of the Review

We invited interested parties to comment on our preliminary results and intent to revoke in part. We received no comments. As a result, our final results of review are unchanged from those presented in the preliminary results of review, and we determine that a zero margin exists for the period December 1, 1989 through November 30, 1990.

Revocation in Part

For the reasons set forth in the preliminary results, because we are satisfied that there is no likelihood of resumption of sales at less than fair value and because petitioner has not objected to our tentative revocation, we revoke in part the antidumping finding on elemental sulphur from Canada with respect to Sulco. See, 19 CFR 352.25(b). This partial revocation applies to all unliquidated entries of this merchandise exported by Sulco and entered, or withdrawn from warehouse, for consumption on or after December 1, 1990.

Cash Deposit Requirements

Because Sulco's margin is zero the Department will instruct the Customs Service to collect no cash deposits for Sulco. The following deposit requirements will be effective upon publication of these final results of administrative review for all shipments of Canadian elemental sulphur entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Tariff Act: (1) For the subject merchandise exported by manufacturers or exporters not covered in this review but covered in previous reviews, the cash deposit rate will continue to be the rate published in the most recent final results for which the manufacturer or exporter received a company specific rate; (2) if the exporter is no a firm covered in this review or prior reviews, but the manufacturer is, the cash deposit rate will be that established in the most recent review of that manufacturer; (3) the cash deposit rate for any future entries from all other manufacturers or exporters who are not covered in this or prior administrative reviews, and who are unrelated to the reviewed firm or any previously reviewed firm, will be zero percent. This is the most current non-best-information-available rate for any reviewed firm in this proceeding.

This administrative review, revocation in part, and notice are in accordance with sections 751(a)(1) and (c) of the Tariff Act (19 U.S.C. 1675(a)(1), (c)), 19 CFR 353.22, and 19 CFR 353.25.

Dated: December 31, 1991.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-953 Filed 1-13-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-401-401]

Certain Carbon Steel Products From Sweden; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On September 25, 1991, the Department of Commerce (the Department) published the preliminary results of its administrative review of the countervailing duty order on certain carbon steel products from Sweden for the period January 1, 1989 through December 31, 1989 (56 FR 48517). We have now completed that review and determine the total subsidy to be 2.56 per cent *ad valorem*. This rate differs from the preliminary results because of minor calculation adjustments.

EFFECTIVE DATE: January 14, 1992.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Michael Rollin, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On September 25, 1991, the Department published in the **Federal Register** (56 FR 48517) the preliminary results of its administrative review of the countervailing duty order on certain carbon steel products from Sweden (50 FR 41547; October 4, 1985). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments from Sweden of cold-rolled carbon steel flat-rolled products, whether or not corrugated or crimped; whether or not pickled, not cut, not pressed and not stamped to non-rectangular shape; not coated or plated with metal and not clad; over 12 inches in width and of any thickness; whether or not in coils. During the review period, such merchandise was classifiable under item numbers 7209.11.00, 7209.12.00, 7209.13.00, 7209.21.00, 7209.22.00, 7209.23.00, 7209.24.50, 7209.31.00, 7209.32.00, 7209.33.00, 7209.34.00, 7209.41.00, 7209.43.00, 7209.44.00, 7209.90.00, 7211.30.50, 7211.41.70, and 7211.49.50 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1989 through December 30, 1989 and the following programs: (1) Regional development incentives; (2) reconstruction loans; (3) structural loans; (4) government equity infusions; (5) government acquisition of assets for Svenskt Staal AB (SSAB); (6) research and development grants; (7) employment promotion grants; (8) government export credits; (9) municipal and county subsidies; and (10) government restructuring program for the specialty steel industry.

SSAB was the only Swedish exporter of the subject merchandise to the United States during the review period.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received written comments from the respondent, SSAB.

Comment 1: The respondent states that the Department's preliminary results note that SSAB received no benefit from past equity infusions in 1989. The respondent also states that SSAB did not receive any significant new government funds for several years prior to 1989. Therefore, SSAB argues that the increase in the total subsidy in 1989 from the amount in 1987 can only be characterized as a computational anomaly.

Department's Positon: We agree with the respondent that there was no benefit from the government equity infusion during the review period, and that SSAB has not received any new preferential government loans. The total subsidy did not decline in 1989 over the 1987 figure due to the additional reconstruction loans which were written-off between 1987 and 1989, and the marginal increase in the interest rate differential on four structural loans.

Comment 2: The respondent claims that it is unable to reconcile reconstruction loans for certain investments and reconstruction loans for loss coverage in the Department's calculation with the information submitted in the Government of Sweden's questionnaire response.

Department's Position: We used the outstanding loan balance as reported in SSAB's 1989 financial statements to calculate the reconstruction loans as of January 1, 1989. Specifically, note 18 of SSAB's 1989 financial statements, "conditional reconstruction loans", reported long-term liabilities of 167,000,000 SEK and a contingent liability of 508,000,000 SEK. Some of the reconstruction loans are classified as a contingent liability because, according to the terms of the reconstruction loans, interest is paid only when a dividend is paid to the stockholders in an amount equal to the dividend. We include both long-term liabilities and contingent liabilities to calculate the outstanding loan balance. See Certain Carbon Steel Products from Sweden; Preliminary Results of Countervailing Duty Administrative Review (56 FR 19091, 19092, April 25, 1991). Therefore, we used the aggregate figure of 675,000,000 SEK for all reconstruction loans, which represents the outstanding balance for certain investments and loss coverage.

Comment 3: The respondent argues that the amount written off for reconstruction loans includes more than 375 million Swedish kronor (MSEK) capitalized interest, but the Department only deducted 39 MSEK.

Department's Position: The 375 MSEK capitalized interest claimed by the respondent represents capitalized interest on the outstanding balances for amounts written off in 1987 through 1989. We do not accumulate capitalized interest written off in prior review periods. However, we agree with the respondent that the 39 MSEK figure for capitalized interest was incorrect.

In the preliminary results, we deducted the interest payment and capitalized interest of 39 MSEK. After further examination, we recalculated capitalized interest on the remaining outstanding balance on the reconstruction loan that was written off during 1989, which is higher than 39 MSEK. We have now adjusted our calculation to reflect this amount of capitalized interest. As a result, the benefit from reconstruction loans is 1.14 percent compared to 1.54 percent in the preliminary calculations.

Comment 4: The respondent argues that the Department incorrectly included a loan in the amount of 15 MSEK in its calculation, which is the balance on a 30 MSEK reconstruction loan that was transferred to the Government of Sweden in 1987.

Department's Position: We used an aggregate figure from SSAB's financial statements and notes to the financial statements to calculate the outstanding reconstruction loan balance. The financial statements did not indicate that the outstanding balance should be reduced as a result of the transfer of the 15 MSEK loan to the Government of Sweden; and, therfore, we have not taken this claimed transfer into account in our calculations.

Comment 5: The respondent states that most of the reconstruction loans were approved in 1978, when the weighted cost of capital (WCC) was 9.9 percent. Therefore, the respondent argues that the Department should apply the "grant cap" rule to these reconstruction loans using the WCC applicable in the year of the loan agreement, which would result in a lower benefit.

Department's Position: We disagree with the respondent. Because the

interest rate changes every year on the reconstruction loans, we treated them as short-term variable interest rate loans. We do not calculate the grant equivalent of short-term loans. See Certain Carbon Steel Products from Sweden; Preliminary Results of Countervailing Duty Administrative Review (53 FR 85883, 85884, September 15, 1988). Moreover, since these loans are not totally drawn down in the year of the loan agreement, it is inappropriate to apply the grant cap to these loans using the WCC in the year of the loan agreement.

Comment 6: The respondent argues that the Department recalculated the variable rate structural loans using the second-period interest rates and applying them retroactively to the first five-year interest period of each loan, rather than to the second-period.

Department's Position: We disagree with the respondent. We did not apply the second-period interest rates retroactively to the loans in the first five-year interest period. The interest rate on the variable rate structural loans is fixed for successive five-year periods, the first beginning at the end of the three-year interest-free period. In 1989, the interest rate changed on four loans, entering those loans into the second five-year interest period. We applied SSAB's new interest rates to those loans only. We calculated discrete grant equivalents for each five-year period. The grant equivalent of each five-year period is the sum of the present values (calculated back to the year of receipt of the loan) of the annual interest differentials for that period. We calculated a separate grant equivalent for the interest benefits accuring during the three-year interest-free grace period and allocated that amount over the 25-year life of the loan.

In the preliminary results, we did not adjust the benchmark interest rate on those variable rate loans that entered into the second five-year interest period to coincide with the new preferential interest rate. We have now recalculated the interest rate differentials using the prevailing benchmark interest rate in 1989 and the preferential interest rate beginning in the first year of the second five-year period.

Comment 7: The respondent argues that some loans were incorrectly amortized over a 25-year period rather than the actual 20-year period.

Department's Position: We agree with the respondent. We have now amortized all structural loans over a 20-year period. Due to this adjustment and the minor calculation adjustments described in *Comments 3 and 6*, we determine the benefit from the structural loans to be 0.51 percent *ad vvalorem*.

Final Results of Review

As a result of our review, we determine the total subsidy during the period January 1, 1989 through December 31, 1989 to be 2.56 percent *ad valorem*. After reviewing all of the comments received, we have changed the rate from the preliminary results of review because of minor calculation adjustments.

The Department will instruct the Customs Service to assess countervailing duties of 2.56 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after January 1, 1989 and on or before December 31, 1989.

Further, the Department will instruct the Customs Service to collect a cash deposit of estimated countervailing duties as provided by section 751(a)(1) of the Tariff Act of 2.56 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results of administrative review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22 (1991).

Dated: January 7, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-954 Filed 1-13-92; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-037]

Cotton Yarn From Brazil; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On September 19, 1991, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on cotton yarn from Brazil (56 FR 47456; September 19, 1991). We have now completed that review and determine the net subsidy to be zero for one firm, 0.20 percent *ad valorem* for one firm, 7.75 percent *ad valorem* for one firm and 1.29 percent *ad valorem* for all other firms for the period January 1, 1990 through December 31, 1990. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*.

EFFECTIVE DATE: January 14, 1992.

FOR FURTHER INFORMATION CONTACT: Elizabeth Levy or Michael Rollin, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On September 19, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 47456) the preliminary results of its administrative review of the countervailing duty order on cotton yarn from Brazil (42 FR 14089; March 15, 1977). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of Brazilian cotton yarn, carded but not combed, wholly of cotton. During the review period, such merchandise was classifiable under item numbers 5205.11.10, 5205.11.20, 5205.12.10, 5205.12.20, 5205.13.10, 5205.13.20, 5205.14.10, 5205.14.20, 5205.15.10, 5205.15.20, 5205.31.00, 5205.32.00, 5205.33.00, 5205.34.00, and 5205.35.00 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1990 through december 31, 1990, nine companies and six programs: (1) Income Tax Reduction for Export Earnings; (2) Reductions of Taxes and Import Duties through BEFIEX; (3) SUDENE Regional Tax Exemption; (4) CACEX Preferential Working Capital Financing for Exports; (5) Preferential Export Financing under CIC-OPCRE of the Banco do Brasil; and (6) Preferential Financing for Industrial Enterprises by the Banco do Brasil (FTS and EGF loans).

Calculation Methodology for Assessment and Cash Deposit Purposes

In calculating the benefits received during the review period, we followed the methodology described in the preamble to 19 CFR 355.20(d) (53 FR 52325; December 27, 1988). First, we calculated a country-wide rate, weight-

averaging the benefits received by the nine companies subject to review to determine the overall subsidy from all countervailable programs benefitting exports of the subject merchandise to the United States. Because the country-wide rate was above *de minimis*, as defined by 19 CFR 355.7, we proceeded to the next step in our analysis and examined the *ad valorem* rate we had calculated for each company for all countervailable programs combined, to determine whether individual company rates differed significantly from the weighted-average country-wide rate. Two companies received aggregate benefits which were zero or *de minimis* (significantly different within the meaning of 19 CFR 355.22(d)(3)(ii)); one company, Fiacao Nordeste do Brasil S.A.—Finobrasa, received aggregate benefits which were otherwise significantly different in accordance with 19 CFR 355.22(d)(3)(i). These three companies must be treated separately for assessment and cash deposit purposes.

The remaining six companies received aggregate benefits from all countervailable programs combined which were not significantly different from the weighted-average country-wide rate; their rates were used in the calculation to establish the "all other" rate for the review period. See, *e.g.*, Final Results of Countervailing Duty Administrative Review; Certain Apparel from Argentina (56 FR 41823; August 23, 1991) and Final Results of Countervailing Duty Administrative Review; Ceramic Tile from Mexico (56 FR 27496; June 14, 1991).

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received a written comment from the Government of Brazil. The comment was timely within the meaning of 19 CFR 355.38(c)(1)(ii).

Comment: The Government of Brazil claims that the "Imposto sobre Produtos Industrializados" (IPI), a tax exemption, on four of the nineteen pieces of equipment imported under BEFIEX contracts should not be included in the calculation of the BEFIEX benefit for Fiacao Nordeste do Brasil S.A.—Finobrasa. In support of its claim, the Government of Brazil cites Article 17 of Brazilian Decree-Law 2.433, of May 19, 1988, as amended by Decree-Law 2451 of July 29, 1988, which states that the IPI tax exemption is available to all imports of machinery.

Department's Position: We disagree. We requested detailed information on BEFIEX from the Government of Brazil and Finobrasa in the original questionnaire of April 17, 1991. In Finobrasa's response of July 11, 1991, it reported one aggregate amount for the total import duty and tax exemptions received under BEFIEX. In a supplemental questionnaire issued July 19, 1991, we requested more detailed information on the imports and benefits received under BEFIEX. Finobrasa responded on August 7, 1991, with a table entitled "BEFIEX Exemptions." This table listed the import duty and tax exemptions received during the review period on each piece of equipment imported under BEFIEX. The table contained four asterisks in the "IPI tax payable" labelled column indicating that these four pieces of equipment received and IPI exemption. The asterisks referred to a footnote which stated "IPI exemption on imports of machinery [that] was given pursuant to Decree-Law 2.433 of May 19, 1988, article 17, as amended by Decree-Law 2.451 of July 19, 1988 . . . this is a generally available benefits."

The IPI tax portion of BEFIEX copntracts has been found countervailable in all Brazilian countervailing duty cases where BEFIEX was used. The Department has never made a determination in any Brazilian countervailing duty investigation or review that Decree-Law 2.433, as amended, rendered the IPI tax exemption non-countervailable. While the decree indicates that the IPI tax exemption is now available to companies other than those with BEFIEX contracts, the Government of Brazil has not submitted any information demonstrating that the IPI tax exemption is, in fact, used by more than a specific group of enterprises, industries or groups thereof. Therefore, we do not have sufficient information in this administrative review upon which to base a redetermination of the IPI tax exemption.

Accordingly, we have included both the import duty exemption and the IPI tax exemption in our calculations of Finobrasa's BEFIEX benefit.

Firms Not Receiving Benefits

We determine that the following firms received zero or *de minimis* benefits during the period January 1, 1990 through December 31, 1990:

(1) Unitika do Brasil Industria Textil Ltda.
(2) Fiacao e Tecelagam Kanebo do Brasil S.A.

Final Results of Review

After considering the comments received, we recommend that the net subsidy remain unchanged from the preliminary determination at zero for one firm *de minimis* for one firm, 7.75 percent *ad valorem* for one firm, and 1.29 percent *ad valorem* for all other firms.

The Department will instruct the Customs Service to liquidate, without regard to countervailing duties, shipments of Brazilian cotton yarn from the two firms with zero benefits listed above, and to assess countervailing duties of 7.75 percent of the f.o.b. invoice price on shipments of this merchandise from Fiacao Nordeste do Brasil S.A.—Finobrasa, and 1.29 percent of the f.o.b. invoice price on shipments from all other firms entered, or withdrawn from warehouse, for consumption on or after January 1, 1990 and exported on or before December 31, 1991.

The Department also will instruct the Customs Service to waive the collection of cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on any shipments of merchandise from the two firms with zero or *de minimis* benefits listed above, and to collect a cash deposit of estimated countervailing duties of 7.75 percent of the f.o.b. invoice price on all shipments of the subject merchandise from Fiacao Nordeste do Brasil S.A.—Finobrasa. The elimination of the Income Tax Reduction for Export Earnings program on April 12, 1990 decreases the total estimated duty deposit rate for all other firms from 1.29 percent to 0.93 percent of the f.o.b. invoice price on shipments entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. The deposit requirement and waiver shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: December 31, 1991.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92-955 Filed 1-13-92; 8:45 am]

BILLING CODE 3510-DS-M

Short-Supply Review: Certain Aluminum-Killed Cold-Rolled Steel Sheet

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice of short-supply review and request for comments: Certain aluminum-killed cold-rolled steel sheet.

SUMMARY: The Secretary of Commerce ("Secretary") hereby announces a review and request for comments on a short-supply request for 350 metric tons of certain aluminum-killed cold-rolled steel sheet for the first quarter of 1992 under Article 8 of the U.S.-E.C. steel arrangement.

SHORT SUPPLY REVIEW NUMBER: 63.

SUPPLEMENTARY INFORMATION: Pursuant to section 4 (b)(3)(B) of the Steel Trade Liberalization Program Implementation Act, Public Law No. 101–221, 103 Stat. 1886 (1989) ("the Act"), and § 357 104(b) of the Department of Commerce's Short-Supply Procedures, 19 CFR 357.104(b) ("Commerce's Short-Supply Procedures"), the Secretary hereby announces that a short-supply request is under review with respect to certain aluminum-killed ("AK") cold-rolled steel sheet used in the manufacture of aperture masks, a fundamental component of color television picture and data display tubes. On January 8, 1992, the Secretary received an adequate petition from Buckbee Mears Cortland, Inc. ("BMC") requesting a short-supply allowance for 350 metric tons of certain AK cold-rolled steel sheet for the first quarter of 1992 under Article 8 of the Arrangement Between the European Coal and Steel Community and the Government of the United States of America Concerning Trade in Certain Steel Products. BMC requests the following quantities of four different sizes of AK cold-rolled steel sheet: 45 metric tons that are 18.62 inches in width and 0.0060 inch in thickness, 70 metric tons that are 19 inches in width and 0.0068 inch in thickness, 190 metric tons that are 24 inches in width and 0.0068 inch in thickness, and 45 metric tons that are 27 inches in width and 0.0060 inch in thickness. BMC states that the requested product is not produced domestically and that its potential European supplier does not have sufficient export licenses available during this period.

The requested product meets the following specifications:

*Chemistry (*in maximum values): Carbon (0.004 percent, aim 0.002 percent); Silicon (0.040 percent); Sulfur (0.030 percent); Aluminum (0.070 percent); Nitrogen (0.008 percent); Manganese (0.450 percent); Copper (0.080 percent); Phosphorus (0.035 percent); and Iron (remainder); the total of these elements excluding iron not to exceed one percent;

Width Tolerance: +/− 0.04 inch;

Thickness Tolerance: +0.00028 inch, −0.00020 inch;

Coil Weight: 1.5 to 3.0 metric tons, with a maximum of 20 percent in 0.5 to 1.5 metric ton weights per single shipment.

Section 4(b)(4)(B)(i) of the Act and § 357 106(b)(1) of Commerce's Short-Supply Procedures require the Secretary to make a determination with respect to a short-supply petition not later than the 15th day after the petition is filed if the Secretary finds that one of the following conditions exist: (1) The raw steelmaking capacity utilization in the United States equals or exceeds 90 percent; (2) the importation of additional quantities of the requested steel product was authorized by the Secretary during each of the two immediately preceding years; or (3) the requested steel product is not produced in the United States. The Secretary finds, on the basis of available information, that this product is not produced in the United States at this time. Therefore, in accordance with section 4(b)(4)(B)(i)(III) of the Act and § 357 106(b)(1)(iii) of Commerce's Short-Supply Procedures, the Secretary will apply a rebuttable presumption that this product is presently in short supply. Unless domestic steel producers provide comments in response to this notice proving that they can and will produce the requested quantity of this product within the desired period of time, provided it represents a normal order-to-delivery period, the Secretary will issue a short-supply allowance not later than January 23, 1992.

COMMENTS: Interested parties wishing to comment upon this review must send written comments not later than January 21, 1992 to the Secretary of Commerce, Attention: Import Administration, room 7866, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230. All documents submitted to the Secretary shall be accompanied by four copies. Interested parties shall certify that the factual information contained in any submission they make is accurate and complete to the best of their knowledge.

Any person who submits information in connection with a short-supply review may designate that information, or any part thereof, as proprietary, thereby requesting that the Secretary treat that information as proprietary. Information that the Secretary designates as proprietary will not be disclosed to any person (other than officers or employees of the United States Government who are directly concerned with the short-supply determination) without the consent of the submitter unless disclosure is ordered by a court of competent jurisdiction. Each submission of proprietary information shall be accompanied by a full public summary or approximated presentation of all proprietary information which will be placed in the public record. All comments concerning this review must reference the above noted short-supply number.

FOR FURTHER INFORMATION CONTACT: Mark Brechtl or Kathy McNamara, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, room 7866, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230, (202) 377–1386 or (202) 377–1390.

Dated: January 10, 1992.

Alan M. Dunn,

Assistant Secretary for Import Administration.

[FR Doc. 92–1026 Filed 1–13–92; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

Coastal Zone Management: Federal Consistency Appeal by Virginia Electric and Power Co. From an Objection by the State of North Carolina

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal and request for comments.

On October 3, 1991, the Secretary of Commerce (Secretary) received a notice of appeal from the Virginia Electric and Power Company (Appellant). The Appellant is appealing to the Secretary under section 307(c)(3)(A) of the Coastal Zone Management Act (CZMA) and the Department's implementing regulations, 15 CFR part 930, subpart H. The appeal is taken from an objection by the State of North Carolina Department of Environment, Health and Natural Resources (State) to the Appellant's consistency certification that its proposal for a Federal Energy Regulatory Commission license amendment involving the permanent, consumptive withdrawal of approximately 60,000,000 gallons of water each day from Lake Gaston (located just north of the Virginia-North Carolina border), is consistent with the State s coastal zone management program.

The CZMA provides that a timely objection by a state to a consistency certification precludes any Federal

agency from issuing licenses or permits for the activity unless the Secretary finds that the activity is either "consistent with the objectives" of the CZMA (Ground I) or "necessary in the interest of national security" (Ground II). (Section 307(c)(3)(A).) To make such a determination, the Secretary must find that the proposed project satisfies the requirements of 15 CFR 930.121 or 930.122.

The Appellant requests that the Secretary override the State's consistency objections based on Ground I and Ground II. To make the determination that the proposed activity is "consistent with the objectives" of the CZMA, the Secretary must find that (1) the proposed activity furthers one or more of the national objectives or purposes contained in section 302 or 303 of the CZMA, (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest, (3) the proposed activity will not violate the Clean Air Act or the Federal Water Pollution Control Act, and (4) no reasonably alternative is available that would permit the activity to be conducted in a manner consistent with North Carolina's coastal management program. 15 CFR 930.121. To make the determination that the proposed activity is "necessary in the interest of national security," the Secretary must find that a national defense or other national security interest would be significantly impaired if the proposed activity is not permitted to go forward as proposed. 15 CFR 930.122.

Public comments are invited on the findings that the Secretary must make as set forth in the regulations at 15 CFR 930.121. Comments are due within 30 days of the publication of this notice and should be sent to Mary Gray Holt, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue, NW., suite 603, Washington, DC 20235. Copies of comments should also be sent to Roger N. Schecter, Director, Division of Coastal Management, State of North Carolina, Department of Environment, Health and Natural Resources, 225 North McDowell Street, Raleigh, North Carolina 27602.

All nonconfidential documents submitted in this appeal are available for pubic inspection during business hours at the offices of the State of North Carolina, Department of Environment, Health and Natural Resources and the Office of the Assistant General Counsel for Ocean Services, NOAA.

FOR ADDITIONAL INFORMATION CONTACT: Mary Gray Holt, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue, NW., suite 603, Washington, DC 20235, (202) 606–4200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Dated: January 8, 1992.

Thomas A. Campbell,

General Counsel.

[FR Doc. 92–878 Filed 1–13–92; 8:45 am]

BILLING CODE 3510–08–M

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council's Pacific Northwest Crab Industry Advisory Committee (PNCIAC) will meet on January 29, 1992, in room 20939, in building 4 of the Alaska Fisheries Science Center, Seattle, WA. The meeting will begin at 8:30 a.m.

The PNCIAC will consider the following agenda items:

(1) Review the status of Tanner crab hybird management in the Bering Sea, (2) review crab issues before the March 1992 Board of Fisheries meeting; (3) review industry proposals for the March 1993 Board of Fisheries shellfish meeting (deadline for submission of proposals is April 10, 1992); and (4) discuss other business.

For more information contact Brent Paine, North Pacific Fishery Mangement Council, P.O. Box 103136, Anchorage, AK 99510; telephone (907) 271–2809; or contact Richard White, PNCIAC Chairman, P.O. Box 97019, Redmond, WA 98073; telephone (206) 881–8181.

Dated: January 8, 1992.

David S. Crestin,

Deputy Director Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–845 Filed 1–13–92; 8:45 am]

BILLING CODE 3510–22–M

North Pacific Fishery Management Council; Correction of Notice of Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The date of a public meeting of the North Pacific Fishery Management Council, originally published as January 17, 1992, at 56 FR 67599 on December 31, 1991, was incorrect. The correct date, and beginning time, for this meeting is January 15, 1992, at 8 a.m. The agenda as published in December 31 is unchanged.

For more information contact the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809.

Dated: January 9, 1992.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–963 Filed 1–13–92; 8:45 am]

BILLING CODE 3510–22–M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's (Council) Salmon Technical Team (STT) will hold a public meeting on January 27–31, 1992 at the Council's office (address below).

The STT will begin its meeting on January 27 at 1 p.m., to draft the "Review of 1991 Ocean Salmon Fisheries" and begin assessment of the impacts of ocean fisheries on salmon stocks listed or proposed for listing under the Endangered Species Act.

Public comment pertaining to the assessment of the 1991 ocean salmon fisheries may be provided at appropriate times as determined by the STT chairman.

For more information contact John Coon, Staff Officer (salmon), Pacific Fishery Management Council, suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone (503) 326–6352.

Dated: January 8, 1992.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92–846 Filed 1–13–92; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Application for Permit; Sea World, Inc. (P2W).

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

1. Applicant: Sea World, Inc., 7007 Sea World Drive, Orlando, Florida 32821.

2. Type of Permit Requested: Public display.

3. Name and Number of Marine Mammals: Killer whale (*Orcinus orca*) 5. One (1) adult male, two (2) adult females, and possibly two calves. One calf was born on December 24, 1991, and the other adult female is believed to be pregnant. If the births are successful, the females would be imported with their calves some time after at least twelve months of age.

4. Requested Activity: Import from Sealand of the Pacific, Ltd., 1327 Beach Drive, Victoria, B.C. V8S 2N4.

5. Duration of Activity: The animal will be imported within two years after issuance of a permit.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Silver Spring, Maryland, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinion contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by appointment in the following offices:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Highway, room 7324, Silver Spring, Maryland 20910 (301/713–2289); and

Director, Southeast Region, National Marine Fisheries Service, NOAA, 9450 Koger Boulevard, St. Petersburg, Florida 33702 (813/893–3141).

Dated: January 6, 1992.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 92–737 Filed 1–13–92; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Application for Permit; Sea World, Inc. (P2X).

Notice is hereby given that an Applicant has applied in due form for a permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

1. Applicant: Sea World, Inc., 7007 Sea World Drive, Orlando, Florida 32821.

2. Type of Permit Requested: Public display.

3. Name and Number of Marine Mammals: Killer whale (*Orcinus orca*), 1.

4. Requested Activity: Import from Marineland of Canada, Inc., 7657 Portage Road, Niagara Falls, Ontario, Canada L2E 6X8.

5. Duration of Activity: The animal will be imported within one year after issuance of a permit.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Silver Spring, Maryland, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by appointment in the following offices:

Office of Protected Resources, National Marine Fisheries Service, NOAA, 1335 East-West Highway, room 7324, Silver Spring, Maryland 20910 (301/713–2289); and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731–7415 (213/514–6196).

Dated: January 8, 1992.

Nancy Foster,

Director, Office of Protected Resources.

[FR Doc. 92–736 Filed 1–13–92; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Licensing information may be obtained by writing to: National Technical Information Service, Center for Utilization of Federal Technology—Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151 or by telephoning (703) 487–4732. All patent applications may be purchased, specifying the serial number listed below, by writing NTIS, 5285 Port Royal Road, Springfield, Virginia 22161 or by telephoning the NTIS Sales Desk at (703) 487–4650. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Patent Licensing Specialist, Center for the Utilization of Federal Technology.

Department of Health and Human Services

7–204,163 (U.S. 5,066,490) Protein Crosslinking Reagents Cleavable Within Acidified Intercellular Vesicles.

7–283,849 (U.S. 5,068,716) Synthesis of Chloracetyl and Bromoacetyl Modified Peptides for Preparation of Synthetic Peptide Polymers, Conjugated Peptides, and Cyclic Peptides.

7–350,908 (U.S. 5,040,539) Pulse Oximeter for Diagnosis of Dental Pulp Pathology.

7–451,689 (U.S. 5,058,441) Safety Pipette and Adaptor Tip.

7–528,080 (U.S. 5,044,363) Waste Gas Released During Surgical Activity (Adsorption System for Scavenging Anesthetic Agents).

7–551,521 (U.S. 5,068,253) Treatment of a Microbial Infection with Drugs Containing Para-Acetamidobenzoic Acid (Treatment of Pneumocystis Carinii in AIDS and their Immunosuppressed Patients).

7–707,543 Use of Visible Light for Treatment of Immunodeficiency.

7–743,518 Papua New Guinea Human T-Lymphotropic Virus.
7–755,959 Vacuum Filtration Apparatus.
7–769,626 Astrocyte-Specific Transcription of Human Genes.

Department of Interior

7–265,109 (U.S. 5,067,272) Apparatus for Water Resalination and Drip Irrigatrion of Row Crops.
7–367,646 (U.S. 5,043,119) High Strength Particulate Ceramics.
7–477,395 (U.S. 5,039,312) Gas Separation With Rotating Plasma Arc Reactor.
6–594,824 (U.S. 3,998,426) Clamshell-Type Hydraulic Flow Control Gate.

Department of Agriculture

7–393,010 (U.S. 5,047,239) Biological Control Fruit Rot.
7–436,154 (U.S. 5,045,314) Control of Parasitic Nematode of Ova/Larvae with Bacillus Laterosporus.
7–629,903 (U.S. 5,064,673) Method and Composition of Cooked Tomato Flavor.
7–691,873 Synthetic Bait for Delivery of Chemicals and Biologics.
7–764,732 System for Separating Particles in a Rotary Separator.
7–764,924 Constructed Wetlands to Control Nonpoint Source Pollution.

[FR Doc. 92–810 Filed 1–13–92; 8:45 am]
BILLING CODE 3510-04-M

DEPARTMENT OF DEFENSE

Armed Forces Epidemiological Board, DoD; Open Meeting

1. In accordance with section 10(a)(2) to the Federal Advisory Committee Act (Pub. L. 92–462) announcement is made of the following committee meeting:

Name of Committee: Armed Forces Epidemiological Board, DOD.
Date of Meeting: 20–21 Feb 1992.
Time: 0800–1600.
Place: Walter Reed Army Institute of Research, Washington, DC.
Proposed Agenda: 20 Feb 1992—Service preventive medicine reports, hepatitis B vaccine, Rift Valley Fever vaccine, acellular pertussis vaccine, Japanese encephalitis vaccine, influenza vaccine for 1992–1993 influenza season, viscerotropic leishmaniasis, malaria vaccine, pediculosis in children. *21 Feb 1992*—Tuberculosis update, HIV look back, DOD Civilian Evaluation Peer Review Program.

2. This meeting will be be open to the public but limited by space accommodations. Any interested person may attend, appear before or file statements with the committee at the time and in the manner permitted by the committee. Interested person wishing to participate should advise the Executive Secretary, AFEB, Skyline Six, 5109 Leesburg Pike, room 667, Falls Church, Virginia 22041–3258.

W. M. Parsons,
Captain, Medical Service Corps, United States Navy, Executive Secretary.
[FR Doc. 92–811 Filed 1–13–92; 8:45 am]
BILLING CODE 3710-08-M

Department of the Army, Corps of Engineers

Notice of Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the West Pearl River Navigation Project in Louisiana and Mississippi

AGENCY: U.S. Army Corps of Engineers, Vicksburg District, DoD.

ACTION: Notice of intent.

SUMMARY: The proposed action is to evaluate the environmental desirability of additional maintenance dredging on the Pearl and West Pearl Rivers in the vicinities of Bogalusa and Slidell, Louisiana.

FOR FURTHER INFORMATION CONTACT: Marvin Cannon, CELMK–PD–Q, 3515 I–20 Frontage Road, Vicksburg, Mississippi 39180–5191, (601) 631–5436.

SUPPLEMENTARY INFORMATION:

1. Proposed Action: The proposed action would restore a navigable channel from the mouth of the West Pearl River to the vicinity of Bogalusa, Louisiana.

2. Alternatives: Alternatives to be evaluated include no action, dredging shallow portions of the streams, mining sediments from shallow portions of the streams, ocean disposal of dredged material, improving wildlife habitat with dredged material, utilizing natural sandbars to receive dredged material, and utilizing sand and gravel pits to receive dredged material.

3. a. A scoping meeting will be held in Bogalusa, Louisiana, during 1992. Public notices to be published later will inform the general public on location, time, and date.

b. Significant issues include bottomland hardwoods, wetlands, endangered species, waterfowl, fish, water quality, cultural resources, socioeconomic conditions, etc. Additional environmental review and consultation requirements could be identified during the scoping process.

c. The following will be invited to participate as cooperating agencies: The Environmental Protection Agency; U.S. Fish and Wildlife Service; National Marine Fisheries Service; Mississippi Department of Wildlife, Fisheries, and Parks; and the Louisiana Department of Wildlife and Fisheries.

4. The DEIS will be available for review by the general public in November 1992.

Kenneth L. Denton,
Army Federal Register Liaison Officer.
[FR Doc. 92–826 Filed 1–13–92; 8:45 am]
BILLING CODE 3710-PU-M

Notice of Open Meeting; Army Advisory Panel on ROTC Affairs

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following panel meeting:

Name of Panel: Army Advisory Panel on ROTC Affairs.
Date of Meeting: February 3–4, 1992.
Place: Key Bridge Marriott.
Time: 9 a.m.–5 p.m., Feb 3, 1992, 9 a.m.–12 p.m., Feb 4, 1992.
Proposed Agenda: The meeting will consist of briefings and discussions. The meeting is open to the public. Any interested person may appear before or file a statement with the Panel at the time, and in the manner, permitted by the Panel. It is projected that the following events will take place during the meeting. After opening remarks by Major General Wallace C. Arnold and the chairman of the Panel, Dr. Anthony F. Ceddia, any administrative matters requiring attention will be resolved. The meeting will then proceed with a variety of recent ROTC Cadet Command initiatives. Major General Arnold will provide an overview of the significant changes since the June 1991 meeting at Fort Knox, KY. Briefings on February 3 will include: Scholarship Update, Missioning Update, Advertising Strategy, Marketing Operation Citizen Soldier, Spring Gold and Green to Gold Updates, Camps Update, Cadet Professional Development Training, the Hight School Program Update, Nursing Update and the Governmental Agency Program (GAP) Update. On February 4 the Army Advisory Panel on ROTC Affairs will meet in general session to formulate recommendations, consider progress made on previous Panel recommendations, and to select a date for the next Panel meeting.

Kenneth L. Denton,
Army Federal Register Liaison Officer.
[FR Doc. 92–825 Filed 1–13–92; 8:45 am]
BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management,

invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before February 13, 1992.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett, (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Mary P. Liggett at the address specified above.

Dated: January 8, 1992.

Mary H. Liggett,

Acting Director, Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: Reinstatement.

Title: 1993 National Study of Postsecondary Faculty—Institution and Faculty Questionnaires

Frequency: Quadrennial.

Affected Public: Individuals or households, State or Local government.

Reporting Burden: Responses: 386. *Burden Hours:* 386.

Recordkeeping Burden: Recordkeepers: 0. *Burden Hours:* 0.

Abstract: This field test will evaluate the suitability of postsecondary faculty and institution questionnaires and determine the best operational procedures for the full-scale study. The Department will use this information to respond adequately to the changing environment of postsecondary education.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: Annual Report on Independent Living Rehabilitation Services, Title VII, Part A.

Frequency: Annually.

Affected Public: State or local governments.

Reporting Burden: Responses: 80. *Burden Hours:* 800.

Recordkeeping Burden: Recordkeepers: 0. *Burden Hours:* 0.

Abstract: This information will be used to analyze and evaluate the Independent Living Rehabilitation services provided by State agencies funded under title VII, part A of the Rehabilitation Act, as amended.

Office of Postsecondary Education

Type of Review: Extension.

Title: Performance Report for the Student Support Services Program.

Frequency: Annually.

Affected Public: Non-profit institutions.

Reporting Burden: Responses: 704. *Burden Hours:* 3,168.

Recordkeeping Burden: Recordkeepers: 0. *Burden Hours:* 0.

Abstract: Grantees who participate in the Student Support Services Program submit this report to the Department. The Department uses the information to assess the accomplishment of project goals and objectives, and to aid in effective program management.

[FR Doc. 92–872 Filed 1–13–92; 8:45 am]

BILLING CODE 4000–10–M

DEPARTMENT OF ENERGY

Community College of Southern Nevada; Award of Grant Agreement, Noncompetitive Financial Assistance

AGENCY: DOE, Yucca Mountain Site Characterization Project Office.

ACTION: Notice of intent to award on a noncompetitive basis.

SUMMARY: DOE announces its intent to award a renewal, pursuant to 10 CFR 600.7(b)(2)(i)(A), of Grant Agreement DE–FG08–91NV11007 with the Community College of Southern Nevada, North Las Vegas, Nevada, to support the continued provision of training in the use of Geographic Information Systems (GIS). This training continues to be essential for the development of GIS in the monitoring of effects associated with the DOE Yucca Mountain Site Characterization Project and the possible development of the Yucca Mountain candidate site for a high-level nuclear waste repository. The Nuclear Waste Policy Act of 1982, as amended by the Nuclear Waste Policy Amendments Act of 1987, provides for the development of a program for the permanent, safe disposal of spent fuel and high-level nuclear waste, and for the characterization of the Yucca Mountain site. The GIS is a fundamental tool that will be used during site characterization. The continuation of the work effort by the awardee will provide a locally-available source of training in GIS and provide the community and area with individuals trained in the development and use of this technology.

The project period under the above grant agreement will continue through December 31, 1995. The anticipated award date of the amendment is January 1, 1992. The revised total estimated cost of the project is $475,146.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Yucca Mountain Site Characterization Project Office, Attention: Birdie Hamilton-Ray, P.O. Box 98608, Las Vegas, Nevada 89192–8608.

Issued in Las Vegas, Nevada on December 27, 1991.

Nick C. Aquilina,

Manager, DOE Nevada Field Office.

[FR Doc. 92–956 Filed 1–13–92; 8:45 am]

BILLING CODE 6450–01–M

Office of the Deputy Secretary

U.S. Alternative Fuels Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public

Law 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: United States Alternative Fuels Council.

Date and Time: Thursday January 23, 1992, 9 a.m.–5 p.m.; Friday January 24, 1992, 9 a.m.–11:30 a.m.

Location: AAA Headquarters, 1000 AAA Drive, Heathrow Florida.

Contact: Mark Bower Office of Policy Planning and Analysis, U.S. Department of Energy Mail Stop AC–26, Washington, DC 20585, Phone: (202) 586–3891

Purpose of the Council: To provide advice to the Interagency Committee on Alternative Motor Fuels to help:

1. "* * * coordinate Federal agency efforts to develop and implement a national aiternative motor fuels policy."

2. "* * * ensure the development of a long-term plan for the commercialization of alcohols, natural gas, and other potential alternative motor fuels."

3. "* * * ensure communication among representatives of all Federal agencies that are involved in alternative motor fuels projects or that have an interest in such projects."

4. "* * * provide for the exchange of information among persons working with, or interested in working with, the commercialization of alternative motor fuels."

Agenda, U.S. Alternative Fuels Council, 1000 AAA Drive, Heathrow, FL, January 23–24, 1992

January 23, 1992

9 a.m.–9:30 a.m.

Update on the Council's Correspondence to the Deputy Secretary of Energy

• Robert W. Hahn and Charles R. Imbrecht, Co-Chairmen of the Council.

9:30 a.m.–10:30 a.m.

Update on Pending Energy Legislation.
Chair: Charles R. Imbrecht.

• Sam Fowler Senate Energy Committee.

10:30 a.m.–12 p.m.

Report on the Activities Tasked to the Congressional Research Service by the Council.
Chair: Robert W. Hahn.

• David E. Gushee, Congressional Research Service.

12 p.m. 1 p.m.

Lunch.

1 p.m.–5 p.m.

Alternative Fuels Policy Session—Part I.
Facilitator: Herb Lapp.

5 p.m.

Adjourn.

Agenda, U.S. Alternative Fuels Council, 1000 AAA Drive, Heathrow FL, January 23–24, 1992

January 24, 1992

9 a.m. 11 a.m.

Alternative Fuels Policy Session—Part II.
Facilitator: Herb Lapp

11 a.m.–11:30 a.m.

Discussion of Future Meetings and Agendas and Public Comment Period.
Chair: Charles R. Imbrecht.

11:30 a.m.

Adjourn.

Public Participation: The meeting is open to the public. Written statements may be filed with the Council either before or after the meeting. Members of the public who wish to make oral statements pertaining to the agenda items should contact Mark Bower at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairpersons of the Council are empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes. Available for public review and copying approximately 30 days following the meeting at the Public Reading Room, room 1E190, Forrestal Building, 1000 Independence Ave. SW., Washington, DC between 9 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

Issued at Washington, DC, on January 9, 1992.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 92–957 Filed 1–13–92; 8:45 am]

BILLING CODE 6450–01–M

Office of Conservation and Renewable Energy

Energy Conservation Program for Consumer Products; Representative Average Unit Costs of Energy

AGENCY: Office of Conservation and Renewable Energy, Department of Energy.

ACTION: Notice of Unit Costs of Energy.

SUMMARY: In this notice, the Department of Energy is forecasting the representative average unit costs of five residential energy sources for the year 1992. The five sources are electricity, natural gas, No. 2 heating oil, propane, and kerosene. The representative unit costs of these energy sources are used in the Energy Conservation Program for Consumer Products established by the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act, by the National Appliance Energy Conservation Act of 1987, and by the National Appliance Energy Conservation Amendments of 1988.

EFFECTIVE DATE: The representative average unit costs of energy contained in this notice will become effective February 14, 1992, and will remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT:
Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Forrestal Building, Mail Station CE–43, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9127.
Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–41, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507

SUPPLEMENTARY INFORMATION: Section 323 of the Energy Policy and Conservation Act (Pub. L. 94–163), as amended by the National Energy Conservation Policy Act (Pub. L. 95–619), by the National Appliance Energy Conservation Act of 1987 (Pub. L. 100–12), and the National Appliance Energy Conservation Amendments of 1988 (Pub L. 100–357) (Act)[1] requires that the Department of Energy (DOE) prescribe test procedures for the determination of the estimated annual operating cost and other measures of energy consumption for certain consumer products specified in the Act. These test procedures are found in 10 CFR part 430, subpart B.

Section 323(b) of the Act requires that the estimated annual operating costs of a covered product be computed from measurements of energy use in a representative average-use cycle and from representative average unit costs of energy needed to operate such product during such cycle. The section further requires DOE to provide information regarding the representative average unit costs of energy for use wherever such costs are needed to perform calculations in accordance with the test procedures. Most notably, these costs are used under the Federal Trade Commission appliance labeling program established by section 324 of the Act and in connection with advertisements of appliance energy use and energy costs which are covered by section 323(c) of the Act.

DOE last published representative average unit costs of residential energy for use in the Conservation Program for Consumer Products on January 30, 1991 (56 FR 3455). Effective February 14, 1992, the cost figures published on January 30, 1991 will be superseded by the cost figures set forth in this notice.

DOE's Energy Information Administration (EIA) has developed the 1992 representative average unit costs of

[1] References to the "Act" refer to the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act, by the National Appliance Energy Conservation Act of 1987, and by the National Appliance Energy Conservation Amendments of 1988.

electricity, natural gas, and No. 2 heating oil found in this notice. These costs were taken from EIA's fourth quarter 1991 Short-Term Energy Outlook (Outlook), DOE/EIA-0202 (91/4Q), which forecasts the retail cost of selected energy products based on changes in world oil prices, wellhead natural gas prices, seasonal patterns in retail prices, and established trends in margins and operating expenses. The development of these costs is discussed in detail in the fourth quarter 1991 issue of this report, which is EIA's quarterly publication of historical and forecasted energy consumption and prices. The costs appear in Table 6 of EIA's Outlook. In the case of residential natural gas, taxes are included in the cost. Copies of this report are available at the National Energy Information Center, Forrestal Building, Room 1F-048, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8800.

In the cases of kerosene and propane, the 1992 representative average unit costs found in this notice were developed by other means since EIA's Outlook does not provide a forecast of the retail costs of these fuels. However, historical refiner prices for kerosene and propane are available from another EIA publication, Petroleum Marketing Monthly (PMM), DOE/EIA-0380. Referring to Table 2 of the October 1991 issue of the PMM, DOE obtained refiner average sales prices to end users for kerosene and propane for 1990. To forecast 1992 representative average unit costs for kerosene and propane, DOE made the assumption that the percentage change in 1992 from the 1990 annual average (last complete year of available data) for No. 2 heating oil prices to residential customers (which can be calculated from Table 6 of the Outlook) could be applied to kerosene and propane. Refiner prices to end users for kerosene and propane were used since, of the comparable recent data available, these are believed to be most representative of prices to residential consumers.

The 1992 representative average unit costs stated in Table 1 are provided pursuant to section 323(b)(4) of the Act and will become effective February 14, 1992, of publication. They will remain in effect until further notice.

Issued in Washington, DC, January 8, 1992.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy

TABLE 1.—REPRESENTATIVE AVERAGE UNIT COSTS OF ENERGY FOR FIVE RESIDENTIAL ENERGY SOURCES

[1992]

Type of energy	In common terms	As required by test procedure	Dollars per million Btu[1]
Electricity	8.25¢/Kwh [2,3]	$0.0825/Kwh	$24.18
Natural gas	58.00¢/therm [4] or $5.98/MCF [5,6]	0.00000580/Btu	5.80
No. 2 Heating Oil	$1.03/gallon [7]	0.00000743/Btu	7.43
Propane	.74/gallon [8]	0.00000810/Btu	8.10
Kerosene	.89/gallon [9]	0.00000659/Btu	6.59

[1] Btu stands for British thermal units.
[2] Kwh stands for kilowatt hour.
[3] 1 Kwh=3,412 Btu.
[4] 1 therm=100,000 Btu. Natural gas prices include taxes.
[5] MCF stands for 1,000 cubic feet.
[6] For the purposes of this table, one cubic foot of natural gas has an energy equivalence of 1,031 Btu.
[7] For the purposes of this table, one gallon of No. 2 heating oil has an energy equivalence of 138,690 Btu.
[8] For the purposes of this table, one gallon of liquid propane has an energy equivalence of 91,333 Btu.
[9] For the purposes of this table, one gallon of kerosene has an energy equivalence of 135,000 Btu.

[FR Doc. 92-959 Filed 1-13-92; 8:45 am]
BILLING CODE 6450-01-M

Office of Energy Research

Special Research Grant Program Notice 92-4: Advanced Externally-Fired Combined Cycles for Coal Utilization Research Needs Assessment

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting grant applications, correction.

SUMMARY: The following notice, previously published in the **Federal Register** of December 6, 1991 (56 FR 63948), is being republished to correct typographical errors. On page 63949, column one, second paragraph, and on the same page, column two, fourth sentence of the "Supplementary Information" section, the words "facilities" are being corrected to read "facilitate." In addition, the date for applications to be submitted in response to this notice is being extended to March 3, 1992.

The Office of Program Analysis, Office of Energy Research of the Department of Energy, hereby announces its interest in receiving applications for a Special Research Grant that seek support for conducting a research needs assessment in the area of advanced externally-fired combined cycles for coal utilization as it relates to electric power generation. The purpose of this activity is to identify and disseminate priority research needs for achieving high efficiency (greater than 50%) externally-fired combined cycles with economic, environmental, and performance potential superior to other alternatives. This project should not focus on topics such as the integrated gasification combined cycle, pressurized fluid bed combustion systems, integrated gasification fuel cell systems, and magnetohydrodynamic systems.

Applicants must include a description of the planned methodology that will be used in assessing long term (up to 20 years) research directions, opportunities, priorities, and degrees of difficulty in accomplishing identified research opportunities.

Applicants must enlist the aid of experts from academia and industry to identify, describe, and assess on a worldwide basis, the most promising new (i.e., beyond state of the art) developments, applications, and opportunities in critically enabling science and technologies to facilitate the future utilization of coal for power generation with externally-fired combined cycles.

APPLICATION INFORMATION: Information about submission of applications, eligibility, limitations, evaluation, selection processes, and other policies and procedures may be found in the Application and Guide for the Special Research Grant Program. The application kit and guide and copies of 10 CFR part 605 are available from Paul Maupin, Office of Program Analysis, Office of Energy Research, U.S. Department of Energy, ER-33,

Washington, DC 20585. Instructions for preparation of an application are included in the application kit. Telephone requests may be made by calling (301) 903–4355 or FTS 233–4355. The Catalog of Federal Domestic Assistance number for this program is 81.049.

DATES: Formal applications submitted in response to this notice should be received by March 3, 1992.

ADDRESSES: Formal applications sent by U.S. Mail should be addressed to: U.S. Department of Energy, Office of Energy Research, Division of Acquisition and Assistance Management, ER–64, Washington, DC 20585, ATTN: Program Notice 92–4. The following address must be used when submitting applications by U.S. Postal Service Express, any commercial mail delivery service, or when handcarried by the applicant: U.S. Department of Energy, Office of Energy Research, Division of Acquisition and Assistance Management, ER–64/GTN, 19901 Germantown Road, Germantown, MD 20874.

SUPPLEMENTARY INFORMATION: A substantial effort in coal utilization technology has led to the technical feasibility of utilizing coal in cleaner and more efficient ways than in the past. However, the projected rate of coal utilization in the next millennium will challenge the technology ceilings in dealing with areas such as greenhouse gas emissions and waste management. The more efficiently we utilize this resource, the less impact we have on global warming and other environmental issues. To facilitate the future utilization of coal in a more efficient and benign manner will require more than stretching the limits of current technology. It will require innovation in the ways we approach the problems encountered in coal utilization.

The current technological objectives for coal utilization are exemplified by the goals of the High Performance Power System (HIPPS) program. The objectives of the HIPPS program are to obtain a cycle efficiency of 47% or higher while reducing acid rain precursors and particulate emissions. Meeting these objectives would result in the emission of carbon dioxide being reduced by at least 25% over current pulverized coal plants due to the increased cycle efficiency.

Development of economical, very high efficiency, very low emission coal-based power generation systems is widely recognized by scientists and engineers as an important research and development goal. Several generic types of advanced coal-based power generation systems are currently the subject of significant research and development by both the private and public sector. Some of these generic types have been the subject of substantial analysis and research, including: The Integrated Gasification Combined Cycle (IGCC), Pressurized Fluid Bed Combustion Systems, Integrated Gasification Fuel Cell Systems, and Magnetohydrodynamics (MHD) Systems.

Recently, increased attention is being given to the externally-fired cycle generic category as one which may offer substantial promise for development of economically attractive "first generation" systems and for longer range versions (second and third generations) with economic and performance potential superior to other alternatives. The term externally-fired (or indirectly-fired) combined cycle systems refers to the set of alternative coal-based system concepts which can be characterized as follows:

—A gas turbine topping cycle in which the high temperature coal combustion products are an indirect source of hot gases through some form of heat exchange subsystem, rather than passing directly through the gas turbine.

—A bottoming cycle, which may be a conventional Rankine cycle consisting of heat recovery and power extraction.

—Integrated environmental control systems including combustion product cleanup for achieving very low solid waste, liquid effluent, and air emission.

To date, little of the fundamental applied and exploratory research underway has been focusing on developing the scientific and technology base to enable development of this type of system.

To support future goals in coal utilization for super-clean performance with high efficiency requires advances in many diverse technology areas. For the development of externally-fired (or indirectly-fired) combined cycles, this will require advances in coal cleaning, combustion technology, improved that transfer components, efficient emissions control, improved high temperature materials, as well as the integration of component cycles into the combined cycle.

To address the objectives discussed above, the Office of Program Analysis of the Office of Energy Research has coordinated with the DOE Office of Fossil Energy and is planning to award a grant for a research needs assessment for advanced externally-fired combined cycles for coal utilization. The Office of Program Analysis plans to publicly disseminate the results and findings of this research needs assessment in a report. Specific information concerning requirements for the application follow.

The principal investigator of the assessment must be an individual who is competent and accomplished in appropriate scientific and technical areas. Competence and accomplishments shall be described in the application and include industrial or academic experience, research publications, contributions while serving as an expert, consultant services, honors and awards, and education including advanced degrees and other academic qualifications. The principal investigator also shall be an individual with demonstrated ability to conduct research needs assessments for fossil fuel fired processes and manage individual experts and groups of experts in the timely and successful identification, analysis, distillation and documentation of scientific and technical information. These demonstrated abilities shall be documented in the application.

The applicant, in order to address adequately and competently the full scope of this endeavor and at sufficient technical depths in all major topical areas, must enlist the aid of other scientific/technical experts. The application shall provide tentative identification of all proposed experts and their present affiliation. All experts, both foreign and domestic, are to be individuals who are competent and accomplished in a scientific or technical discipline directly related to the research assessment. Technical competence and accomplishments of each expert shall be described in the application and should include the individual's experience, research publications, consultant services, contributions while serving as an expert with other groups, honors and awards, professional experience, and education including advanced degrees and other academic qualifications. The expected contributions of each expert to the assessment's objectives should be identified. The overall technical expertise of the group of experts, when combined with the technical expertise of the principal investigator should be shown to be adequate to cover the various scientific and technical disciplines involved in the assessment.

These experts will assist the principal investigator in accomplishment of the assessment's objectives, especially in writing major sections of the required final report They are also expected to conduct technical discussions with other

experts, specialists, researchers, and research program managers in the scientific and technical areas; conduct site visits to laboratories and other facilities where research and development directly related to the subject area is conducted and managed; and review and evaluate recent and relevant research including scientific and technical literature.

The initial composition of a group of experts, other consultants, and any subsequent changes must be approved by the Program Manager and Contracting Officer.

Applications also should include the following: A schedule of the assessment's major activities including the tentative content of meetings of various teams of the experts, a description of anticipated site visits to publicly and privately funded facilities, a description of all conferences to be attended as a part of assessment activities, and a description of the methodology for obtaining a peer review of the assessment results.

The applicant is expected to supply the personnel, facilities, and materials necessary to accomplish the objectives of the assessment as described in this notice.

APPLICATION REVIEW AND AWARD INFORMATION: Applications will be reviewed in accordance with the Energy Research Merit Review System, published in the **Federal Register**, March 11, 1991 (56 FR 10244). Subject to the availability of appropriated FY 1992 funds, one grant award at approximately $300,000 is planned. The grant award will be for a 1-year period.

Issued in Washington, DC, on January 6, 1992.

D.D. Mayhew,

Deputy Director for Management, Office of Energy Research.

[FR Doc. 92-790 Filed 1-13-92; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

[Docket No. PP-94]

Application for a Presidential Permit; Central Power and Light Company

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of receipt of application for a Presidential Permit in Docket No. PP-94; Central Power and Light Company.

SUMMARY: Central Power and Light Company has applied for a Presidential permit to construct two new electric transmission lines at the U.S./Mexican border.

DATES: Comments, protests or requests to intervene must be submitted on or before February 13, 1992.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE-52), Office of Fuels Programs, Office of Fossil Energy, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket Number PP-94 should appear clearly on the envelope and on the document contained therein.

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202-586-9624 or Lise Howe (Program Attorney) 202-586-2900.

SUPPLEMENTARY INFORMATION: The construction, connection, operation, and maintenance of facilities at the international border of the United States for the transmission of electrical energy is prohibited in the absence of a Presidential permit pursuant to Executive Order No. 12038. Exports of electricity from the United States to a foreign country also are regulated and require authorization under section 202(e) of the Federal Power Act.

On December 23, 1991, Central Power and Light Company (CPL) applied to the Department of Energy (DOE) for a Presidential permit to construct, connect, operate, and maintain one 138-kilovolt (kV) and one 69-kV transmission line on the same double-circuit structure. The 69-kV line would originate at CPL's "Brownsville Switch Station". The proposed 138-kV line would originate at the Military Highway substation which is owned jointly by CPL and the Public Utilities Board of the City of Brownsville, Texas, (PUB), and located approximately 0.4 miles south of the Brownsville Switch Station. From the Military Highway substation, the two lines would extend south approximately 1.3 miles on the same double-circuit structure to a proposed crossing of the international boundary with Mexico. The proposed lines would interconnect at the international boundary with 69-kV and 138-kV transmission lines owned and operated by the Comision Federal de Electricidad (CFE), the Mexican national electric utility.

In its application for a Presidential permit, CPL stated that it is currently negotiating an agreement with CFE for the firm purchase of power and energy by CFE from CPL. The agreement is expressly contingent on the construction of these proposed new facilities to accommodate the requested sales.

In related matters, CPL stated in its application that it expects CFE to request rescission of the Presidential permit issued to CFE on April 14, 1961, in Docket No. PP-15A, for the existing 69-kV electric transmission line extending from CPL's Brownsville substation to CFE's Matamoros substation. The rescission would be contingent upon authorization of the facilities for which CPL has now applied and it would be effective upon electrification of those facilities. Upon rescission of Presidential Permit PP-15A, the existing 69-kV facilities would be removed. Prior to the operation of these proposed facilities, CPL also must amend its current electricity export authorizations. In its application, CPL stated that it intends to make such a filing in the very near future.

Procedural Matters

Any person desiring to be heard or to protest this application should file a petition to intervene or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Rules of Practice and Procedures (18 CFR 385.211, 385.214).

Any such petitions and protests should be filed with the DOE on or before the date listed above. Additional copies of such petitions to intervene or protests also should be filed directly with:

C.E. Orsak, Coordinator, Inter-Utility Affairs, Central Power and Light Company, P.O. Box 2121, Corpus Christi, Texas 78403.

Carolyn Y. Thompson, Esq., Donna J. Bobbish, Esq., Jones, Day, Reavis & Pogue, Metropolitan Square, 1450 G Street, NW., Washington, DC 20005-2088.

Pursuant to 18 CFR 385.211, protests and comments will be considered by the DOE in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene under 18 CFR 385.214. Section 385.214 requires that a petition to intervene must state, to the extent known, the position taken by the petitioner and the petitioner's interest in sufficient factual detail to demonstrate either that the petitioner has a right to participate because it is a State Commission; that it has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a consumer, customer, competitor, or security holder of a party to the proceeding; or that the

petitioner's participation is in the public interest.

A final decision will be made on this application after a determination is made by the DOE that the proposed action will not impair the reliability of the U.S. electric power supply system.

Before a Presidential permit may be issued, the environmental impacts of the proposed DOE action (i.e., granting the Presidential permit, with any conditions and limitations, or denying it) must be evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA). The NEPA compliance process is a cooperative, non-adversarial process involving members of the public, state governments and the Federal government. The process affords all persons interested in or potentially affected by the environmental consequences of a proposed action an opportunity to present their views, which will be considered in the preparation of the environmental documentation for the proposed action. Intervening and becoming a party to this proceeding will not create any special status for the petitioner with regard to the NEPA process. Should a public proceeding be necessary in order to comply with NEPA, notice of such activities and information on how the public can participate in those activities will be published in the **Federal Register**, local newspapers and public libraries and/or reading rooms in the vicinity of the electric transmission facilities.

Copies of this application will be made available, upon request, for public inspection and copying at the Department of Energy, room 3F–070, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, 20585, from 9 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on January 8, 1992.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 92–958 Filed 1–13–92; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. QF92–14, et al.]

Hunterdon Cogeneration Limited Partnership, et al., Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Hunterdon Cogeneration Limited Partnership

January 2, 1992.

[Docket No. QF92–14–000]

On December 23, 1991, Hunterdon Cogeneration Limited Partnership, tendered for filing an amendment to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The amendment provides additional information pertaining to ownership structure of the facility.

Comment date: January 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

2. Second Imperial Geothermal Company

January 2, 1992.

[Docket No. QF92–53–000]

On December 23, 1991, Second Imperial Geothermal Company, of 610 East Glendale Avenue, Sparks, Nevada 89431, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The facility will be located in Imperial County, California. The facility will include an isopentane evaporator and a turbine generator. The maximum net electric power production capacity of the facility will be approximately 37 MW. The primary source of energy will be geothermal resources.

Comment date: February 13, 1992, in accordance with Standard Paragraph E at the end of this notice.

3. Puget Sound Power & Light Company

January 3, 1992.

[Docket No. ER91–518–000]

Take notice that Puget Sound Power & Light Company (Puget) on December 20, 1991 tendered for filing an amendment to its rate filing the above proceeding.

Copies of the amendment to filing were served upon Bonneville Power Administration.

Comment date: January 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

4. Puget Sound Power & Light Company

January 3, 1992.

[Docket No. ER91–519–000]

Take notice that Puget Sound Power & Light Company (Puget) on December 20, 1991 tendered for filing an amendment to its rate filing in the above proceeding.

Copies of the amendment to filing were served upon Bonneville Power Administration.

Comment date: January 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

5. Delmarva Power & Light Company

January 3, 1992.

[Docket No. ER92–232–000]

Take notice that Delmarva Power & Light Company (Delmarva) on December 19, 1991, tendered for filing proposed Supplement No. 6 to its FERC Rate Schedule No. 38. This Supplement, filed with the approval and concurrence of the City of Dover, Delaware (Dover), is being made to coordinate with similar internal accounting changes with respect to Peak Season Maintenance Obligations between members of the Pennsylvania-New Jersey-Maryland Interconnection (PJM).

Copies of the filing were served upon The City of Dover, the Mayor of the City of Dover and the Delaware Public Service Commission.

Comment date: January 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

6. Central Power and Light Company

January 3, 1992.

[Docket No. ER92–235–000]

Take notice that Central Power and Light Company (CPL) on December 18, 1991, tendered for filing a Notice of Cancellation in the above-referenced docket. The filing cancels Rate Schedule FERC No. 86 effective January 1, 1990. Pursuant to that Rate Schedule, CPL provided certain transmission service for Texas Utilities Electric Company.

Copies of the filing were posted in accordance with the Commission's regulations.

Comment date: January 17, 1992, in accordance with Standard Paragraph E end of this notice.

7. The United Illuminating Company

January 3, 1992.

[Docket No. ER92–231–000]

Take notice that on December 19, 1991, The United Illuminating Company (UI) tendered for filing a rate schedule for a short-term, coordination transaction involving the sale of capacity entitlements to Connecticut Municipal Electric Energy Cooperative (CMMEC). The rate schedule corresponds to a letter agreement, dated December 3, 1991 between UI and CMEEC. The commencement date for service under the agreement is January 1, 1992. UI proposes that the rate schedule commence on this date.

The service provided under the agreement is the provision of capacity

entitlements and associated energy from UI's Bridgeport Harbor Station Unit #2.

Copies of the filing were mailed to CMEEC.

Comment date: January 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

8. PacifiCorp Electric Operations

January 3, 1992.

[Docket No. ER91-674-000]

Take notice that PacifiCorp Electric Operations (PacifiCorp), on December 19, 1991, tendered for filing, in accordance with the Commission Order dated November 26, 1991, an amended filing of the Transmission Service and Operating Agreement (Agreement) between PacifiCorp and Utah Municipal Power Agency (UMPA).

PacifiCorp respectfully re-news its request for a waiver of prior notice and that an effective of August 1, 1991 be assigned by the Commission.

Copies of the filing have been supplied to UMPA and the Utah Public Service Commission.

Comment date: January 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

9. Tampa Electric Company

January 3, 1992.

[Docket No. ER92-234-000]

Take notice that on December 19, 1991, Tampa Electric Company (Tampa Electric) tendered for filing Service Schedule D, providing for Long-Term Interchange Service Tampa Electric and Seminole Electric Cooperative, Inc. (Seminole). The Service Schedule D was tendered as a supplement to the existing Agreement for Interchange Service between Tampa Electric and Seminole.

Tampa Electric also tendered for filing, as a supplement to the Service Schedule D, a Letter of Commitment providing for the sale by Tampa Electric to Seminole of capacity and energy at an initial maximum hourly delivery rate of 50 megawatts.

Tampa Electric proposes an effective date of February 21, 1992, for the Service Schedule D, and no sooner than that date for the Letter of Commitment.

Copies of the filing have been served on Seminole and the Florida Public Service Commission.

Comment date: January 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

10. Northern States Power Company

January 3, 1992.

[Docket No. ER91-581-000]

Take notice that on December 20, 1991, Northern States Power Company (NSP) tendered for filing an Amendment (Amendment) to the above-captioned filing. The original filing, submitted September 3, 1991, requested acceptance for filing of a Transmission Service letter Agreement dated September 13, 1990 and a Supplemental Agreement dated November 9, 1990, between NSP and Citizens Power & Light Corporation, Massachusetts (Citizens).

The Transmission Service Letter Agreement essentially provides that NSP shall deliver on an interruptible basis up to 50 MW per hour of energy from United Power Association (UPA), at the NSP-UPA points of interconnection, to Wisconsin Power & Light Company (WPL) at the NSP-WPL points of interconnection, subject to NSP's right to curtail and/or interrupt such delivery at NSP's sole discretion, at any time, for any reason. The Amendment provides additional cost support for the transmission rate and loss factors charged Citizens for the transmission services provided.

NSP again requests the Transmission Services Letter Agreements be accepted for filing effective September 13, 1990 and November 9, 1990, respectively, and requests waiver of the Commission's notice requirements in order for the Agreements to be accepted for filing on those dates.

Comment date: January 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

11. The Kansas Power and Light Company

January 3, 1992.

[Docket No. ER92-245-000]

Take notice that on December 27, 1991, The Kansas Power and Light Company (KPL) tendered for filing Revised Service Schedules B—Emergency Services, and C—System Energy Service, and Service Schedules D—Economy Energy Service and F—Term Energy Service to KPL's Electric Interconnection Contract with Omaha Public Power District. KPL states that these Service Schedules will more closely align the services available under its Electric Interconnection Contract with Omaha Public Power District with short-term nonfirm energy services provided under its other interconnection agreements.

Comment date: January 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

12. Iowa Public Service Company

January 3, 1992.

[Docket No. ER91-684-000]

Take notice that December 27, 1991, Iowa Public Service Company (IPS) tendered for filing a second amendment to the filing of an executed Transmission Interconnection and Interchange Agreement between IPS and Nebraska Public Power District (NPPD).

IPS indicates that the Interconnection and Interchange Agreement reflects the establishments of a transmission interconnection between the two systems. NPPD will pay IPS a facilities charge based on transmission line investment. This second amendment provides additional cost support for the transmission facilities.

IPS respectfully requests a waiver of the Commission's rules so that the Interconnection and Interchange Agreement may be approved retroactive to December 29, 1986.

IPS states that copies of this filing were served on NPPD and the Iowa Utilities Board.

Comment date: January 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

13. Delmarva Power & Light Company

January 3, 1992.

[Docket No. ER92-233-000]

Take notice that Delmarva Power & Light Company (Delmarva) December 19, 1991, tendered for filing proposed Supplement No. 13 to its FERC Rate Schedule No. 71. This Supplement, filed with the approval and concurrence of the Easton Utilities Commission and The Town of Easton (Easton), is being made to coordinate with similar internal accounting changes with respect to Peak Season Maintenance Obligations between members of the Pennsylvania-New Jersey-Maryland Interconnection (PJM).

Copies of this filing were served upon Easton Utilities Commission, the mayor of the Town of Easton and the Maryland Public Service Commission.

Comment date: January 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

14. Long Island Lighting Company

January 3, 1992.

[Docket Nos. ER92-25-000, ER92-26-000, and ER92-31-000]

Take notice that on December 30, 1991, Long Island Lighting Company (LILCO) tendered for filing an amendment to its earlier filing of October 3, 1991 in the above-referenced dockets.

LILCO requests the Commission to waive its notice of filing requirements to permit the rates to become effective June 1, 1991.

Copies of this filing have been served upon the New York State Public Service Commission, the Power Authority of the

State of New York, the counties of Nassau and Suffolk, the villages of Freeport, Greenport and Rockville Centre, the Municipal Electric Utilities Association of New York State, Brookhaven National Laboratory, and Grumman Corporation.

Comment date: January 17, 1992, in accordance with Standard Paragraph E end of this notice.

15. Cogentrix Eastern Carolina Corporation

January 3, 1992.

[Docket No. QF83-263-005]

On December 26, 1991, Cogentrix Eastern Carolina Corporation (Applicant) of 9405 Arrowpoint Boulevard, Charlotte, North Carolina 28273-8110, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility is presently certified for approximately 30 MW (33 FERC ¶ 62,349 (1985)). The instant recertification is requested to reflect the termination of the sale/leaseback arrangement and a change in the ownership structure of the facility.

Comment date: February 13, 1992, in accordance with Standard Paragraph E at the end of this notice.

16. Citizens Utilities Company

January 3, 1992.

[Docket No. ES92-25-000]

Take notice that on December 26, 1991, Citizens Utilities Company (Citizens) filed an application with the Federal Energy Regulatory Commission under section 204 of the Federal Power Act requesting authority to issue common stock dividends on shares of Citizens outstanding common stock over a two-year period ending December 31, 1993 and for exemption from the Commission's competitive bidding regulations.

Comment date: January 27, 1992, in accordance with Standard Paragraph E at the end of this notice.

17. Puget Sound Power & Light Company

January 3, 1992.

[Docket No. ER92-16-000]

Take notice that Puget Sound Power & Light Company (Puget) on December 24, 1991, tendered an amendment to its rate filing in the above proceeding.

Copies of the amendment to filing were served upon City of Seattle and City of Tacoma.

Comment date: January 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

18. The Cincinnati Gas & Electric Company

January 3, 1992.

[Docket No. ER92-174-000]

Take notice that on December 23, 1991, The Cincinnati Gas & Electric Company (CG&E) tendered for filing with the Commission an Amendment to its original filing in this proceeding.

Copies of this filing were served upon Cleveland Public Power, The City of Piqua, Ohio, The Dayton Power & Light Company, American Electric Power Service Corporation and the Ohio Public Utilities Commission.

Comment date: January 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

19. The Kansas Power and Light Company

January 3, 1992.

[Docket No. ER92-239-000]

Take notice that on December 23, 1991, The Kansas Power and Light Company (KPL) tendered for filing revised Exhibits 4A to Transmission Agreements with the Kansas Gas and Electric Company, WestPlains Energy, and Missouri Public Service Division, Utilicorp United, Inc. KPL states that these revised exhibits reflect updated loss amounts associated with transmission services rendered to each party under various load conditions.

Copies of the filing were served upon Kansas Gas and Electric Company, Centel Corporation-Western Power Division, Missouri Public Service Division, Utilicorp United, Inc., and the Utilities Division of the Kansas Corporation Commission.

Comment date: January 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

20. Wisconsin Power & Light Company

January 3, 1992.

[Docket No. ER91-619-000]

Take notice that on December 27, 1991, Wisconsin Power and Light Company (WP&L) tendered for filing with the Federal Energy Regulatory Commission supplemental materials relating to the above docket.

WP&L requests expedited consideration of the filing and an effective date of September 1, 1991. Accordingly, WP&L requests waiver of the Commission's notice requirements.

Comment date: January 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

21. Delmarva Power & Light Company

January 3, 1992.

[Docket No. ER92-236-000]

Take notice that Delmarva Power & Light Company (Delmarva) on December 20, 1991, tendered for filing revised tariff sheets to increase its firm power rates to its ten requirements customers and to decrease its transmission rates that affect six of those customers. Those customers and their FERC rate schedules are as follows:

Customer	FERC rate schedule No.
Old Dominion Electric Cooperative	51, 52, 53
Lewes, Delaware	61
Seaford, Delaware	62
Berlin, Maryland	63
Clayton, Delaware	64
Middletown, Delaware	65
New Castle, Delaware	66
Milford, Delaware	67
Smyrna, Delaware	68
Newark, Delaware	69

Delaware requests that the proposed firm power increase be granted a February 19, 1992 effective date. The aggregate increase in the firm power rate is approximately $5.0 million or about 5.3% to the affected customers. The transmission rates constitute a slight decrease.

According to Delmarva, it has filed the rate increase in order to recover its increased cost of providing electric service and to earn a fair return on its investment dedicated to the public serve.

Delmarva further states that a copy of the filing has been posted as required by the Commission's regulations, and a copy has been mailed to each of the customers affected by the proposed changes and to the public service commissions of the States of Delaware, Maryland and Virginia in which the affected customers are located.

Comment date: January 17, 1992, in accordance with Standard Paragraph E at the end of this notice.

22. Central and South West Services, Inc.

January 6, 1992.

[Docket No. ER92-241-000]

Take notice that on December 24, 1991, Central and South West Services, Inc. (CSWS), on behalf of the four Central and South West Corporation operating companies, Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, and West Texas Utilities Company, tendered for filing a Fixed Transaction Cost Compensation

Procedure for the Central and South West System. The Fixed Transaction Cost Compensation Procedure establishes a method for allocating among the four Operating Companies certain transmission service charges assessed by non-CSW entities. CSWS requests that the Procedure be made effective as of January 1, 1992. Accordingly, CSWS requests waiver of the notice requirements under the Federal Power Act.

Copies of the filing have been served on the Arkansas Public Service Commission, the Louisiana Public Service Commission, the Oklahoma Corporation Commission and the Public Utility Commission of Texas. Copies of the filing are also available for inspection in the main offices of each of the CSW operating subsidiaries.

Comments date: January 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

23. Louisiana Power & Light Company

January 6, 1992.

[Docket Nos. EL89-7-000 and FA86-63-003]

Take notice that on December 13, 1991, Louisiana Power & Light Company (LP&L) tendered for filing its compliance refund report pursuant to the Commission's Opinion No. 366 issued on October 24, 1991 in the above-referenced dockets.

Comment date: January 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

24. Iowa Public Service Company

January 6, 1992.

[Docket No. ER91-686-000]

Take notice that on December 27, 1991, Iowa Public Service Company (IPS) tendered for filing a second amendment to the filing an executed Transmission Service Agreement whereby Iowa Public Service Company (IPS) will provide Cedar Falls Utilities (CFU) with transmission service, commencing January 1, 1985, for CFU's share of power and energy from George Neal Generating Station Unit No. 4. This second amendment provides additional cost support for the transmission service fee.

Section 2 of the Transmission Service Agreement provides that the transmission service fee shall be reviewed and adjusted annually, if necessary. It is IPS' intent to annually filed with FERC any changes to the service fee accompanied by appropriate cost support.

IPS respectfully requests a waiver of the Commission's rules so that the Transmission Service Agreement may be approved retroactive to January 1, 1985.

IPS states that copies of this filing were served on Cedar Falls Utilities and the Iowa Utilities Board.

Comment date: January 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

25. Central Vermont Public Service Corporation

January 6, 1992.

[Docket No. ER92-237-000]

Take notice that on December 13, 1991, Central Vermont Public Service Corporation tendered for filing a Notice of Termination of Rate Schedule FERC No. 156.

Comment date: January 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

26. Southwestern Power Administration

January 6, 1992.

[Docket No. ER92-227-000]

Take notice that on December 16, 1991, Southwestern Power Administration (SWEPCO) tendered for filing a Notice of Cancellation of its Western Systems Power Pool Experimental Sales Benefits Credit Rider pursuant to 35.15 (18 CFR 35.15) of the Commission's regulations.

Comment date: January 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

27. Florida Power Corporation

January 6, 1992.

[Docket No. ER92-183-000]

Take notice that on December 18, 1991, Florida Power Corporation (Florida Power) filed a letter in which it amended its filing in this docket made November 12, 1991 as amended December 4, 1991. In that letter Florida Power (1) answered questions by the Staff regarding two agreements filed in this docket on November 12, 1991, (2) requested that an amendment to an earlier agreement already on file with the Commission be allowed to become effective as of the effective date of the earlier agreement and (3) corrected an error in the November 12, 1991 filing.

Comment date: January 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

28. PacifiCorp Electric Operations

January 6, 1992.

[Docket No. ER92-228-000]

Take notice that PacifiCorp Electric Operations (PacifiCorp), on December 18, 1991, tendered for filing, Revision 9 to Exhibit B (effective October 1, 1991) to the May 29, 1981 Transmission Agreement (PacifiCorp Rate Schedule FERC No. 213), between PacifiCorp, Deseret Generation & Transmission Cooperative (Deseret) and Bridger Valley Electric Association, Inc. (Bridger Valley).

Exhibit B to the Transmission Agreement is revised annually in accordance with article 12 (ii) of the Transmission Agreement, and specifies the projected maximum integrated demand with Deseret desires to have transmitted to Bridger Valley for a four year rolling period.

PacifiCorp respectfully requests, the Commission's Rules and Regulations, that a waiver of prior notice be granted that an effective date of October 1, 1991 be assigned, this date being consistent with provisions of article 12 (ii) of the Transmission Agreement.

Copies of this filing were supplied to Deseret, Bridger Valley and the Wyoming Public Service Commission.

Comment date: January 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

29. Pacific Gas and Electric Company

January 6, 1992.

[Docket No. ER92-229-000]

Take notice that on December 18, 1991, Pacific Gas and Electric Company (PG&E) tendered for filing (1) an agreement entitled "Special Facilities Agreement for Protective Equipment On Lines Leading To Donner Summit" (Special Facilities Agreement), between Sierra Pacific Power Company (Sierra) and PG&E and (2) Amendment No. 1 to the aforementioned Special Facilities.

The Special Facilities Agreement pertains to the rate, terms, and conditions under which PG&E will own, operate, and maintain the facilities specially installed in order to maintain transfer capability to Sierra. Under the Special Facilities Agreement, PG&E charges Sierra a customer advance and a monthly Cost of Ownership Rate, equal to the Cost of Ownership Rate for Transmission-level, Customer-financed facilities filed with the California Public Utilities Commission (CPUC) pursuant to Electric Rule 2. The Cost of Ownership Rate is expressed as a monthly percentage of the installed cost of the facilities.

PG&E has also requested to be allowed automatic rate adjustments whenever the CPUC authorizes a new Electric Rule 2 Cost of Ownership Rate.

Copies of this filing have been served upon Sierra and the CPUC.

Comment date: January 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

30. The Washington Water Power Company

January 6, 1992.

[Docket No. ER92-96-000]

Take notice that on December 20, 1991, The Washington Water Power Company (WWP) tendered for filing an Amendment to its FERC Electric Tariff Volume No. 4. WWP states that the purpose of the amendment is to make changes requested by Commission staff. In addition, WWP renewed its request for a waiver of the sixty (60) day notice requirement so that the Tariff may become effective on November 1, 1991.

A copy of the filing was mailed to Portland General Electric.

Comment date: January 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

31. Puget Sound Power & Light Company

January 6, 1992.

[Docket No. ER91-514-000]

Take notice that Puget Sound Power & Light Company (Puget) on December 20, 1991 tendered an amendment to its rate filing in the above proceeding.

Copies of the amendment to filing were served upon Bonneville Power Administration.

Comment date: January 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

32. Puget Sound Power & Light Company

January 6, 1992.

[Docket No. ER91-512-000]

Take notice that Puget Sound Power & Light Company (Puget) on December 20, 1991 tendered an amendment to its rate filing in the above proceeding.

Copies of the amendment to filing were served upon Bonneville Power Administration.

Comment date: January 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

33. Puget Sound Power & Light Company

January 6, 1992.

[Docket No. ER91-517-000]

Take notice that Puget Sound Power & Light Company (Puget) on December 20, 1991 tendered an amendment to its rate filing in the above proceeding.

Copies of the amendment to filing were served upon Bonneville Power Administration.

Comment date: January 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

34. Puget Sound Power & Light Company

January 6, 1992.

[Docket No. ER91-520-000]

Take notice that Puget Sound Power & Light Company (Puget) on December 20, 1991 tendered an amendment to its rate filing in the above proceeding.

The amendment to filing, among other things, corrects the revenue impact of the rate filing. The proposed change in rates would increase revenue from jurisdictional service under this schedule from $3,547 for the twelve months prior to July 31, 1988 to $52,893 for the twelve months immediately thereafter.

Copies of the amendment to filing were served upon Bonneville Power Administration.

Comment date: January 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

35. Puget Sound Power & Light Company

January 6, 1992.

[Docket No. ER91-513-000]

Take notice that Puget Sound Power & Light Company (Puget) on December 20, 1991 tendered an amendment to its rate filing in the above proceeding.

Copies of the amendment to filing were served upon Bonneville Power Administration.

Comment date: January 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

36. Puget Sound Power & Light Company

January 6, 1992.

[Docket No. ER91-515-000]

Take notice that Puget Sound Power & Light Company (Puget) on December 20, 1991 tendered an amendment to its rate filing in the above proceeding.

Copies of the amendment to filing were served upon Bonneville Power Administration.

Comment date: January 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

37. Puget Sound Power & Light Company

January 6, 1992.

[Docket No. ER91-516-000]

Take notice that Puget Sound Power & Light Company (Puget) on December 20, 1991 tendered an amendment to its rate filing in the above proceeding.

Copies of the amendment to filing were served upon Bonneville Power Administration.

Comment date: January 21, 1992, in accordance with Standard Paragraph E end of this notice.

38. Canal Electric Company

January 6, 1992.

[Docket No. ER90-245-004]

Take notice that on December 20, 1991, Canal Electric (Canal) submitted for filing its compliance report pursuant to the Commission's letter order dated November 13, 1991.

Copies of the tendered for filing have been served by Canal upon the Commission's staff, the Massachusetts Attorney General the Town of Belmont and the Department of Public Utilities.

Comment date: January 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

39. Allegheny Generating Company

January 6, 1992.

[Docket No. ER92-242-000]

Take notice that on December 24, 1991, Allegheny Generating Company (AGC) tendered for filing a proposed change in its FERC Rate Schedule No. 1. The proposed change neither increases nor decreases AGC's rates. The proposed effective date for the rate change is March 1, 1992.

The proposed change is to continue the return on common equity as last established in a rate settlement agreement which requires AGC to file its cost-of-service formula rate on or before December 31, 1991.

Copies of the filing have been served upon the jurisdictional customers, the Maryland Service Commission, the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the State Corporation Commission of Virginia, and the West Virginia Public Service Commission, and upon all other parties that participated in settlement agreement at Docket Nos. ER88-553-000 and EL88-8-000.

Comment date: January 21, 1992, in accordance with Standard Paragraph E at the end of this notice.

40. Montaup Electric Company, Newport Electric Corporation

January 6, 1992.

[Docket No. ER91-301-000]

Take notice that on December 20, 1991, Montaup Electric Company (Montaup) filed an amendment to the rate schedule and fuel clause revision filed in this docket. The amendment to the rate schedule allocates energy affiliation savings evenly between Montaup and Newport Electric Corporation (Newport) based on the Staff's method for service since May 1,

1990, and the fuel clause revision flows Montaup's 50% share through to M-rate customers

Montaup and Newport request waiver of the notice requirement in order to place the rate schedule and fuel revision in effect on May 1, 1990. The waiver is necessary as to the rate schedule in order to provide for a method of allocation to cover the period since the savings commenced and as to the fuel clause revision so that there will be a rate schedule on file to permit Montaup's M-rate customers to share in the affiliation savings realized over that period. Montaup's request for waiver reflects the Staff's position that the Staff method of allocation must be made effective as of May 1, 1990. Billing adjustments to Newport and M-rate customers will be made in the billing month following the Commission's acceptance of the filing in order to conform past billings to that filing as effective from that date.

Comment date: January 21, 1992, in accordance with Standard Paragraph E at the end of this notice

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-861 Filed 1-13-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-02508T Texas-47]

State of Texas; NGPA Determination by Jurisdictional Agency Designating Tight Formation

January 8, 1992.

Take notice that on December 23, 1991, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Wilcox Formation underlying a portion of McMullen County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The area of application is located in the southeast corner of McMullen County, within Railroad Commission District 1 and includes the following surveys:

All of the L.E.H. Spaulding A-911 Survey, Section 80

The south half of the Seale & Morris A-438 Survey, Section 15

The north half of the Alfred Spaulding A-917 Survey, Section 54

The notice of determination also contains Texas' findings that the referenced portion of the Wilcox Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92-863 Filed 1-13-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-02505T Texas-15 Addition 3]

State of Texas; NGPA Determination by Jurisdictional Agency Designating Tight Formation

January 8, 1992.

Take notice that on December 23, 1991, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that portions of the Vicksburg Formation underlying a portion of Hidalgo County qualify as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The designated area includes approximately 15,100 acres in portions of "San Ramon" Juan Farias Grant A-62 and "Santa Anita" Manuel Gomez Grant A-63. The area is within Railroad Commission District 4 and includes the Vicksburg J through Y sandstones.

The notice of determination also contains Texas' findings that the referenced portion of the Vicksburg Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 92-862 Filed 1-13-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. JD92-02506T Texas-48]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

January 8, 1992.

Take notice that on December 23, 1991, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Wilcox Formation underlying certain portions of Duval County, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978 (NGPA). The designated area includes approximately 8,100 acres in the Rosita, N.W. Field in massive Upper Wilcox W, X and Y sands in Duval County and consists of the acreage listed in the attached appendix.

The notice of determination also contains Texas' findings that the referenced portion of the Wilcox Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204; within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

Appendix

Wilcox W, X and Y sands in the Rosita, N.W. Field, Wilcox Formation in Duval County Texas, Railroad Commission District 4

Survey name	Abstract
B.S. & F.	A-89
B.S. & F.	A-90
B.S. & F.	A-91
B.S. & F.	A-108
B.S. & F.	A-109
B.S. & F.	A-110
Miguel Ruiz	A-1882
Ford Dix	A-991
S.A. & M.G.R.R.	A-531
Geo. M.C. Atkinson	A-1215
A. Garza	A-1647
Chas. W. Petrie	A-1992

[FR Doc. 92-864 Filed 1-13-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP92-80-000]

Algonquin Gas Transmission Company; Proposed Changes in FERC Gas Tariff

January 7, 1992.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on January 3, 1992, filed proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1, as set forth in the revised tariff sheets:

Proposed To Be Effective February 3, 1992

Second Revised Sheet No. 408
Second Revised Sheet No. 437
Second Revised Sheet No. 438
First Revised Sheet No. 439
Second Revised Sheet No. 667
Second Revised Sheet No. 668
First Revised Sheet No. 669

Algonquin states that it is making the instant filing to comply with the "on behalf of" definition established in the Commission's Order No. 537, Final Rule on Transportation Under section 311 of the Natural Gas Policy Act of 1978 in Docket No. RM90-7-000, issued September 20, 1991.

Under the revised § 284.102 of the Commission's Regulations, interstate pipelines may provide transportation on behalf of a local distribution company or intrastate pipeline, if the local distribution company or intrastate pipeline (1) has physical custody of and transport the natural gas at some point during the transaction; (2) holds title to the natural gas at some point for the purpose related to its status and function as an intrastate pipeline or local distribution company; (3) the gas is delivered to a customer that is located within the local distribution company's service area and the transportation is being provided on its behalf; or (4) the gas is delivered to a customer that is physically able to receive direct deliveries of gas from the intrastate pipeline and the transportation is being provided on its behalf.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-856 Filed 1-13-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP92-78-000]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

January 7, 1992.

Take notice that ANR Pipeline Company ("ANR"), on January 3, 1992, tendered for filing as part of Original Volume No. 1-A of its FERC Gas Tariff, six copies the following tariff sheets:

Fifth Revised Sheet No. 135
Second Revised Sheet No. 136
Second Revised Sheet No. 136A
Third Revised Sheet No. 136B
First Revised Sheet No. 136C

ANR states that the referenced tariff sheets are being submitted in compliance with Order No. 537, which requires certification that transportation of natural gas on behalf of an intrastate pipeline or local distribution company meets the requirements of § 284.102(d) of the Commission's regulations, as revised in the Final Order. ANR has requested that the Commission accept the tendered tariff sheets to become effective February 2, 1992.

ANR states that all of its Volume No. 1-A customers and interested State Commissions have been apprised of this filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Commission, 825 N. Capitol Street, NE., Washington, DC 20426 by January 14, 1992, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure 18 CFR 385.211, 385.214. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-858 Filed 1-13-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TM92-3-22-001]

CNG Transmission Corporation; Proposed Changes in FERC Gas Tariff

January 8, 1992.

Take notice that on December 31, 1991, CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet, with a proposed effective date of January 1, 1992:

Fifth Revised Sheet No. 38

CNG states that the purpose of the filing is to submit a tariff sheet that CNG inadvertently omitted from its filing of November 27, 1991 in the above referenced docket, as directed by the Secretary's letter dated December 26, 1991. CNG states that the tariff sheet reflects the reduction of CNG's take-or-pay surcharge, as supported by workpapers originally filed as Exhibit A to the November 27, 1991 filing.

CNG states that copies of the filing were served upon CNG's customers as well as interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 15, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-870 Filed 1-13-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA91-1-24-004]

Equitrans, Inc.; Proposed Change in FERC Gas Tariff

January 7, 1992.

Take notice that Equitrans, Inc. ("Equitrans") on October 22, 1991, tendered for filing with the Federal Energy Regulatory Commission ("Commission") the following tariff sheet to its FERC Gas Tariff, Original Volume No. 1, effective September 1, 1991:

Alternate 2nd Substitute 19 Revised Sheet No. 34

Equitrans states that the foregoing is being filed in compliance with the Commission's June 25, 1991 Order in Docket No. RP90-70-000, 57 FERC ¶ 61,134. The Order directed Equitrans to exclude the winter requirement quantity charge from the maximum winter rate for its interruptible sales service.

Equitrans states that a copy of its filing has been served upon its purchasers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before January 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party must file a motion to intervene. Parties that have already intervened in this proceeding need not file another motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-853 Filed 1-13-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-76-000]

National Fuel Gas Supply Corporation; Petition To Waive Tariff Provision

January 7, 1992.

Take notice that on January 3, 1992 National Fuel Gas Supply Corporation ("National") filed a Petition For Waiver of a provision of Rate Schedule IT.

The proposed effective date of the waiver is January 31, 1992.

National requests a waiver of subsection 4.5 of National's IT Rate Schedule as necessary to prevent automatic reductions of IT Shippers' Maximum Daily Transportation Quantities ("MDTQ"), until December 31, 1992.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20428, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure 18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before January 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-855 Filed 1-13-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-79-000]

Northern Border Pipeline Company; Compliance Filing Pursuant to Order No. 537

January 7, 1992.

Take notice that on January 3, 1992, Northern Border Pipeline Company (Northern Border) tendered for filing the following tariff sheets as part of its FERC Gas Tariff, Original Volume No. 1:

Original Sheet Number 255A
First Revised Sheet No. 259

Northern Border requests that these tariff sheets be made effective on February 3, 1992.

Northern Border states that the purpose of this filing is to revise the Transportation Service Request portion of the General Terms and Conditions section to show that Northern Border requires, prior to initiation of service, certification from its shippers as to the validity of its section 311 transportation, requires certification from any non-transporting, non-title holding LDC involved in § 284.102(d)(3) transportation, and requires a Shipper requesting transportation pursuant to § 284.223 to indicate if the transaction requires Northern Border to notify a local distribution company and related regulatory agency.

Northern Border states that it is filing the tariff change in compliance with the Commission Order dated September 20, 1991 in Docket No. RM90-7-000; Order No. 537.

Northern Border states that it has served a copy of the filing upon all of its contracted shippers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules of Regulations. All such motions or protests should be filed on or before January 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-857 Filed 1-13-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TF92-1-59-000 and TA92-1-59-002]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

January 7, 1992.

Take notice that Northern Natural Gas Company (Northern), on December 31, 1991, tendered for filing changes in its FERC Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2.

Northern states that it is filing the revised tariff sheets to adjust its Base Average Gas Purchase Cost in accordance with the PGA filing requirements codified by the Commission's Order Nos. 483 and 483-A. Northern states that the instant filing reflects a Base Average Gas Purchase Cost of $2.1859 per MMBtu be effective January 1, through January 31, 1992.

Northern states that copies of the filing were served upon Northern's jurisdictional sales customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before January 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-860 Filed 1-13-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI92-19-000, et al.]

PanCanadian Petroleum Company, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. PanCanadian Petroleum Company

[Docket No. CI92-19-000]

January 3, 1992.

Take notice that on December 27, 1991, PanCanadian Petroleum Company (PanCanadian) of P.O. Box 2850, Calgary, Alberta, Canada T2P 2S5,filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment authorizing sales for resale in interstate commerce of natural gas subject to the Commission's NGA jurisdiction, including imported gas and liquefied natural gas, and gas purchased under any existing or subsequently approved pipeline blanket certificate authorizing interruptible sales for resale of surplus system supply (ISS gas), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: January 24, 1992, in accordance with Standard Paragraph J at the end of this notice.

2. Tenaska Marketing Ventures

[Docket No. CI92-18-000]

January 3, 1992.

Take notice that on December 26, 1991, Tenaska Marketing Ventures (Tenaska Marketing) of 11235 Davenport Street, Omaha, Nebraska 68154, filed an application pursuant to sections 4 and 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment authorizing sales for resale in interstate commerce without rate restriction of natural gas subject to the Commission's NGA jurisdiction, including imported gas and liquefied natural gas, gas purchased under any existing or subsequently approved pipeline blanket certificate authorizing interruptible sales for resale of surplus system supply (ISS gas), and gas purchased from non-first sellers including intrastate pipelines and local distribution companies, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: January 24, 1992, in accordance with Standard Paragraph J at the end of this notice.

3. Panda Resources, Inc.

[Docket No. CP92-271-000]

January 6, 1992.

Take notice that on December 27, 1991, Panda Resources, Inc. (Panda), 4200 East Skelly Drive, Tulsa, Oklahoma 74135, filed in Docket No. CP92-271-000 a petition pursuant to Rule 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207) for a declaratory order that the facilities of, and services performed by the Baca County Gathering System would be exempt from the jurisdiction of the Commission under Section 1(b) of the Natural Gas Act.

Panda states that the facilities that make up the Baca County Gathering system and the services provided thereby constitute the gathering of natural gas. Panda states further that Panda's petition is the companion to the application filed by Panhandle Eastern Pipe Line Company on December 11, 1991, and now pending in Docket No. CP92-229-000, to abandon the system and the services performed therewith.

It is stated that the system is located in Baca County, Colorado and Morton County, Kansas.

Comment date: January 27, 1992, in accordance with first subparagraph of Standard Paragraph F at the end of this notice.

4. Transcontinental Gas Pipe Line Corporation

[Docket No. CP92-256-000]

January 6, 1992.

Take notice that on December 18, 1991, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP92-256-000 an application pursuant to section 7(b) of the Natural Gas Act, as amended, and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission), for an order permitting and approving abandonment of certain firm gas transportation services to United Gas Pipe Line Company (United), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

In such application, Transco states that it entered into several service agreements with United, providing for the transportation of natural gas for United. The application lists the Rate Schedules proposed to be abandoned and states that the primary term of each service agreement has expired. Transco states that pursuant to the service agreements, United is no longer obligated to receive service from Transco under these Rate Schedules. Furthermore, Transco has not provided service to United under such Rate Schedules since the proposed abandonment date of each Rate Schedule. Transco and United have reached an agreement with respect to all the Rate Schedules proposed to be abandoned wherein United supports the instant filing. Transco now seeks authorization to abandon each Rate Schedule as stated below and, set forth in Exhibit A of the application effective on the expiration date of each representative agreement.

Rate schedule	Certification	Expiration date
X-226	CP80-217	07/24/90
X-242	CP83-81	03/11/90
X-200	CP79-178	07/06/89
X-179	CP78-466	01/26/90

No facilities are proposed to be abandoned by the instant application, and no service to any of Transco's other customers will be terminated because of the abandonment requested in the application.

Transco requests that the intermediate decision procedure be omitted and waives oral hearing and opportunity for filing exceptions to the decision of the Commission.

Comment date: January 27, 1992, in accordance with Standard Paragraph F at the end of this notice.

5. Colorado Interstate Gas Company

[Docket No. CP92-265-000]

January 6, 1992.

Take notice that on December 26, 1991, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP92-265-000 an application pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon a sale of natural gas to Northwest Pipeline Corporation (Northwest), all as more fully set forth in the request which is open to public inspection.

It is stated that Northwest was authorized in Docket No. CP79-294 to transport up to 4,000 Mcf per day of natural gas for CIG and that CIG was authorized in Docket No. CP79-270 to

sell up to 25 percent of the gas to Northwest. It is asserted that the sale and transportation services were carried out under the terms of a Gas Gathering and Transportation Agreement signed by CIG and Northwest and dated February 28, 1979 and on file as CIG's Rate Schedule X–34 and Northwest's Rate Schedule X–64. It is further asserted that CIG and Northwest have signed a letter agreement dated June 30, 1991, agreeing to terminate the Gas Gathering and Transportation Agreement. It is explained that no facilities would be abandoned in conjunction with the proposed abandonment of service.

Comment date: January 27, 1992, in accordance with Standard Paragraph F at the end of this notice.

6. Kern River Gas Transmission Company

[Docket No. CP92–267–000]

January 6, 1992.

Take notice that on December 24, 1991, Kern River Gas Transmission Company (Kern River), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP92–267–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a sales tap and related facilities under Kern River's blanket certificate issued in Docket No. CP89–2048–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Kern River states that proposed tap and related facilities would enable it to deliver natural gas to Mobil Natural Gas, Inc. (Mobil), Nevada Cogeneration Associates #1 (NCA1), Nevada Cogeneration Associates #2 (NCA2), Bonneville-Yuma Corporation (B–Y) and Chevron USA, Inc. (Chevron). Kern River further states that pursuant to separate transportation service agreements between Kern River and Chevron, NCA1, NCA2, B–Y and Mobil, Kern River would deliver natural gas for such parties' individual accounts to a point on the transmission facilities of Pacific Gas & Electric Company (PG&E) at PG&E's Hinkley Compressor Station in San Bernardino County, California. It is indicated that the delivery facilities would consist of a tap and approximately 6,000 feet of pipeline extending from the tap to a new measurement station to be located adjacent to the Hinkley Compressor Station. Kern River states that the facilities would have a design delivery volume of 95,000 Mcf per day.

Comment date: February 20, 1992, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92–850 Filed 1–13–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–84–000]

Panhandle Eastern Pipe Line Company; Proposed Changes in FERC Gas Tariff

January 8, 1992.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on January 6, 1992, tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

Third Revised Sheet No. 32–AN
Second Revised Sheet No. 32–BR

Panhandle states that the proposed changes herein which are being filed in compliance with the Commission's Final Rule in Order No. 537, issued September 20, 1991 in Docket No. RM90–7–000, *et al.*, reflect a new provision to section 6.9 of Rate Schedules PT-Interruptible and PT-Firm to require that shippers requesting transportation service to provide information to verify that the requested service complies with subpart B of part 284 of the Regulations.

Panhandle respectfully requests any waiver of the Commission's Regulations necessary to allow these proposed tariff sheets to become effective January 6, 1992.

Panhandle states that copies of its filing have been sent to its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 15, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92–868 Filed 1–13–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–85–000]

Riverside Pipeline Company, L.P.; Proposed Changes in FERC Gas Tariff

January 8, 1992.

Take notice that on January 6, 1992 Riverside Pipeline Company, L.P. (Riverside) tendered for filing First Revised Sheet No. 89 and Original Sheet No. 89A to its FERC Gas Tariff, Original Volume No. 1.

Riverside states that the tariff filing is being made in compliance with the Commission's Final Rule in Revisions to Regulations Governing Transportation Under Section 311 of the Natural Gas Policy Act of 1978 and Blanket Transportation Certificates, FERC Statutes and Regulations ¶ 30,927 (1991) ("Order No. 537"). Specifically, Riverside states that its filing is in compliance with revised 18 CFR 284.12(e), reflecting the Commission's interpretation of the "on behalf of" standard of Section 311 of the Natural Gas Policy Act of 1978.

Riverside states that a copy of this filing has been mailed to each of Riverside's jurisdictional customers, and to the state commissions of Kansas and Missouri.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such motions or protests should be filed on or before January 15, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–869 Filed 1–13–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–210–004]

Tennessee Gas Pipe Company; Filing

January 7, 1992.

Take notice on January 2, 1992, Tennessee Gas Pipe Company (Tennessee) tendered for filing the following revised tariff sheets in Third Revised Volume No. 1 of its FERC Gas Tariff to be effective on October 1, 1991:

Second Substitute First Revised Sheet No. 228
Substitute Original Sheet No. 228A

Tennessee states that this filing is being made to comply with the Commission's letter order dated December 17, 1991, which directed Tennessee to file various modifications.

Tennessee states that copies of its filing are available for inspection at its principal place of business in the Tenneco Building, Houston, Texas, and have been mailed to all affected customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before January 13, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–854 Filed 1–13–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–81–000]

Texas Eastern Transmission Corporation; Proposed Changes in FERC Gas Tariff

January 8, 1992.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on January 3, 1992 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheets:

Third Revised Sheet No. 305
Fourth Revised Sheet No. 330
Sixth Revised Sheet No. 494
Fifth Revised Sheet No. 500
Fifth Revised Sheet No. 501
Fifth Revised Sheet No. 507
Fifth Revised Sheet No. 512
Fifth Revised Sheet No. 513

Texas Eastern states that the tariff sheets listed above are being filed in compliance with the Final Rule, issued on September 20, 1991, in Docket Nos. RM90–7–000, *et al.*, (Order No. 537). The Final Rule adds, effective November 4, 1991, a new paragraph (e) to § 284.102 of the Commission's regulations, which paragraph (e) directs each interstate pipeline to file, within 60 days of the effective date of the final rule, any new or revised tariff provisions as may be necessary to clarify that the pipeline may require such certifications as are specified in the Final Rule.

The proposed effective date of the above tariff sheets is February 3, 1992.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers, interested state commissions, and all Rate Schedule FT–1 and IT–1 Shippers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 15, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protesants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92–865 Filed 1–13–92; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–77–000]

Texas Eastern Transmission Corporation; Proposed Changes in FERC Gas Tariff

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on January 2, 1992, tendered for filing as part of its FERC Gas Tariff,

Fifth Revised Volume No. 1, the following tariff sheet, with a proposed effective date of March 1, 1992:

Third Revised Sheet No. 442

Texas Eastern states that by this filing, Texas Eastern proposes to revise §§ 13.3 and 13.4 of the General Terms and Conditions of its FERC Gas Tariff. The revised Section 13.3 will provide that Texas Eastern will accept one business day prior to the first of any month a predetermined allocation methodology submitted by the operator of the facilities immediately upstream of the Point(s) of Receipt on Texas Eastern's pipeline system for the purpose of allocating the gas received at such Point(s) of Receipt among Texas Eastern's rate schedules and contracts. In the event the operator of the upstream facilities fails to submit a predetermined allocation method, Texas Eastern will allocate receipts into its system based on the ratio of each scheduled nominated quantity to the total scheduled nominated quantities at such point applied to the actual quantities received. In a similar vein, Texas Eastern proposes to conform §§ 13.4 to 13.3 by permitting Texas Eastern and its customers to agree on an allocation methodology among rate schedules for points of delivery different from the existing required methodology.

Texas Eastern submits that similar provisions were approved in Tennessee Gas Transmission Corporation, 56 FERC ¶ 61,463 (1991) and accepted subject to a technical conference in Panhandle Eastern Pipeline Company, 57 FERC ¶ 61,134 (1991).

Texas Eastern states that under Texas Eastern's existing allocation procedure for receipt points (Section 13.3 of the General Terms and Conditions), Texas Eastern either receives no allocation at all or an initial allocation which is subject to multiple reallocations. Texas Eastern states that the lack of predetermined allocation methodologies also makes it extremely difficult for Texas Eastern to identify, on a current basis, shippers on its system who are not balancing their receipts and deliveries on Texas Eastern.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers, interested state commissions, and all Rate Schedule FT-1 and IT-1 shippers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 14, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-852 Filed 1-13-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-82-000]

Transcontinental Gas Pipe Line Corporation; Tariff Filing

January 8, 1992.

Take notice that on January 6, 1992, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing the following tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1:

First Revised Sheet No. 166
First Revised Sheet No. 167
First Revised Sheet No. 178
First Revised Sheet No. 179

The proposed effective date of the revised tariff sheets is February 5, 1992.

Transco states that the purpose of this filing is to revise section 7.2 of Rate Schedule IT and section 8.2 of Rate Schedule FT of Transco's FERC Gas Tariff to require that shippers provide certification and sufficient information to Transco to verify that, for transportation provided pursuant to section 311 of the Natural Gas Policy Act (NGPA) and § 284.102 of the Commission's Regulations, such services qualify as section 311 transportation.

Transco states that on September 20, 1991, the Commission issued a final rule in Order No. 537 regarding revisions to the Commission's regulations governing transportation pursuant to section 311 of the NGPA and blanket transportation certificates. Transco states such order, among other things, requires interstate pipelines to (a) obtain from its shippers certification, including sufficient information, to verify that services provided to them under section 311 of the NGPA and § 284.102 of the Commission's regulations qualify as section 311 transportation, and (b) file by January 6, 1991 any tariff revisions or additions necessary to clarify that an interstate pipeline may require such certifications.

Transco states that copies of the filing have been served upon its customers, state commissions, and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 823 North Capitol Street, NE., Washington, DC 20428, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.124. All such motions or protests should be filed on or before January 15, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-866 Filed 1-13-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP92-83-000]

Trunkline Gas Company; Proposed Changes in FERC Gas Tariff

January 8, 1992.

Take notice that Trunkline Gas Company (Trunkline) on January 6, 1992, tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

First Revised Sheet No. 9-BY.1
First Revised Sheet No. 9-DC.1

Trunkline states that the proposed changes herein which are being filed in compliance with the Commission's Final Rule in Order No. 537, issued September 20, 1991 in Docket No. RM90-7-000, *et al.*, reflect a new provision to section 6.9 of Rate Schedules PT-Interruptible and PT-Firm to require that shippers requesting transportation service to provide information to verify that the requested service complies with subpart B of part 284 of the Regulations.

Trunkline respectfully requests any waiver of the Commission's Regulations necessary to allow these proposed tariff sheets to become effective January 6, 1992.

Trunkline states that copies of its filing have been sent to its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules

and Regulations. All such motions or protests should be filed on or before January 15, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 92-867 Filed 1-13-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP92-272-000]

Trunkline Gas Company; Application

January 7, 1992.

Take notice that on December 27, 1991, Trunkline Gas Company (Trunkline), Post Office Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP92-272-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange of natural gas service between Trunkline, Columbia Gulf Transmission Company (Columbia Gulf) and Columbia Gas Transmission Corporation (Columbia Gas), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline proposes to abandon the transportation service provided under the exchange agreement (agreement) between Trunkline, Columbia Gulf and Columbia Gas dated March 28, 1978, as amended May 16, 1979, under Trunkline's Rate Schedule E-22 to be effective June 20, 1992. Trunkline states that Columbia Gas delivers, pursuant to Trunkline's Rate Schedule E-22, up to 35,000 Mcf of natural gas per day to Stingray Pipeline Company in West Cameron 565 for the account of Trunkline. Trunkline states that it redelivers equivalent quantities to: (1) Exxon Company, U.S.A.'s (Exxon) existing "A" platform located in Eugene Island Block 314; (2) the jointly owned C-N-T line of Columbia Gulf, Tennessee Gas Pipeline Company (Tennessee) and Natural Gas Pipeline Company located in the Eugene Island area; (3) Texaco, Inc., *et al.*,'s existing "A" platform located in Eugene Island Block 313; (4) Shell Oil Company's existing "A" platform located in Eugene Island Block 331; and, (5) Columbia Gulf and Tennessee's jointly owned 30-inch pipeline located in West Cameron Block 601. Balancing points are located at Exxon's existing platforms located in West Cameron Block 616 and 630 at which points either party has the capability of causing gas to be delivered to the other, it is indicated.

Trunkline states that pursuant to article IV of the agreement, Columbia Gulf has requested, by written request dated June 21, 1991, termination of the agreement effective June 20, 1992.

No facilities are proposed to be abandoned herein.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 28, 1992, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Trunkline to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 92-851 Filed 1-13-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP82-487-036]

Williston Basin Interstate Pipeline Co.; Compliance Filing

January 7, 1992.

Take notice that on December 18, 1991, Williston Basin Interstate Pipeline Company (Williston Basin), suite 200, 304 East Rosser Avenue, Bismarck, ND, 58501, filed a proposed schedule for the disposal of stored, excess, company-owned gas which surpasses the maximum authorized inventory of 180,000 MMcf, in compliance with ordering paragraph (E) of the Commission's December 3, 1991 Order.

Williston Basin proposes to accomplish this reduction over a five year time period beginning January 1, 1992. Williston would achieve the Commission's required annual average maximum authorized inventory of 180,000 MMcf by March 31, 1997. Williston Basin also states that the effect of the estimated storage withdrawals would be to reduce their WACOG by roughly $.025 in 1992, $.235 in 1993, $.335 in 1994, $.28 in 1995, and $.185 in 1996. The details of the proposal are set forth more fully in the compliance filing which is on file with the Commission and open to public inspection.

Any person desiring to be heard or to make a protest with reference to Williston Basin's filing should, on or before January 18, 1992, file with the Federal Energy Regulatory Commission (825 North Capitol Street, NE., Washington, DC 20426) a motion to protest in accordance with rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-859 Filed 1-13-92; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 4092-8]

Open Meeting of the Committee on National Accreditation of Environmental Laboratories

Under the Federal Advisory Committee Act (Public Law 92-463),

notice is hereby given that the Committee on National Accreditation of Environmental Laboratories will hold an open meeting on February 4 and 5, 1992 at the Sheraton Premiere, 8661 Leesburg Pike, Tysons Corner, VA 22180. The meeting will begin each day at 9 a.m. and will end at 5 p.m.

The purpose of this meeting will be to finalize the reports submitted in the previous meeting and to complete the evaluation of the solutions proposed at the previous meeting. Preliminary recommendations may also be advanced.

Members of the public are invited to provide written comments in advance of the meeting. Please provide a minimum of 50 copies at your earliest convenience and no later than 5 p.m. Tuesday, January 21, 1992 to Ms. Jeanne Hankins, WH–550G, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC. Comments received by January 21 will be distributed to committee members for their review in advance of the meeting. Comments not provided in advance should be made available for distribution (minimum of 50 copies) at the time of the meeting.

The meeting agenda will include a brief period for oral comment by the public. Those who would like to make an oral presentation should contact Ms. Hankins, no later than 5 p.m. Tuesday January 28, 1992, at 202/260–8454, and provide the subject of their comments and an estimate of the time required.

Dated: January 7, 1992.

E. Ramona Trovato,

Executive Secretary, Environmental Monitoring Management Council.

[FR Doc. 92–943 Filed 1–13–92; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[FCC 91–404]

Lowest Unit Charge of Section 315(b)

AGENCY: Federal Communications Commission.

ACTION: Declaratory ruling.

SUMMARY: By this ruling the Federal Communications Commission declares that any state cause of action dependent on any determination of the lowest unit charges under section 315(b) of the Communications Act, or of some other arising under that subsection, is preempted by Federal law. The sole forum for adjudicating such matters shall be this Commission. In view of the inconsistencies among federal and state court decisions and the likely proliferation of similar suits in a number of jurisdictions, the Commission has issued a declaratory ruling to clarify its role in resolving these political broadcasting controversies. This action will assert that the Commission has exclusive primary jurisdiction to determine questions of liability for violations of section 315(b) of the Communications Act, and exclusive jurisdiction to resolve all controversies arising under section 315(b). The intended effect of this action is to provide certainty to candidates that they are indeed receiving the lowest unit charge; and to broadcasters, the certainty that they are fully complying with the law.

FOR FURTHER INFORMATION CONTACT: Diane Hofbauer, Office of General Counsel, Federal Communications Commission (202) 632–7020.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Declaratory Ruling in re Exclusive Jurisdiction With Respect to Potential Violations of the Lowest Unit Charge Requirements of section 315(b) of the Communications Act of 1934, as amended. The item was adopted December 12, 1991 and released December 13, 1991 with Commissioner Quello dissenting in part and issuing a statement and Commissioner Marshall issuing a statement. The full text of this ruling is available for inspection and copying during normal business hours in Administrative Law Division, Office of General Counsel, Room 616, 1919 M Street, NW., Washington, DC. The full text of this item may also be purchased from the Commission's copy contractor, Downtown Copy Center, 114 21st Street, NW., Washington, DC 20036 (202) 452–1422.

Summary of Declaratory Ruling

Background

1. In a Public Notice released on October 10, 1991, 56 FR 51895, October 16, 1991, the Commission stated that it was considering issuing, on its own motion, a declaratory ruling conforming its earlier conclusion that it has exclusive jurisdiction to determine questions of liability for violations of section 315(b). In response to the public notice, the Commission received twenty-six sets of comments and two informal comments in this proceeding.

Procedures

2. The Commission finds that it will further our ability to promptly and fairly dispose of section 315(b) complaints brought to us as a consequence of this ruling (and all other Section 315(b) claims) by setting out the procedural framework for resolution of such complaints.

3. In order to invoke the Commission's enforcement procedures, complainants alleging a violation of section 315(b) will be required to make a *prima facie* case. This must, at minimum, consist of a short, plain statement of the claim sufficient to show that the complainant is entitled to the relief requested. This requirement could be met by a simple recitation of a sequence of events showing that, if all allegations are accepted as true and all inferences are drawn in the complainant's favor, the complaint would reasonably lie. The complainant will be required to serve the complaint upon the station, and the station will be given ten days to answer the complaint if it so desires. If, after reviewing the complaint and answer (if filed), the Mass Media Bureau ("Bureau") finds that a *prima facie* case has been made, it will issue an Order that will give the parties the opportunity to elect one of two alternative procedures to resolve the complaint: mediation (Alternative Dispute Resolution); or evaluation and disposition by the Bureau subject, of course, to review by the full Commission.

4. Under either process, one a *prima facie* showing has been made, the complainant will be entitled to limited discovery subject to specific conditions. The Bureau's Order will establish the limitations on and timetable for discovery. Documents subject to discovery will consist of the station's records related to rates, terms and conditions for any advertising, commercial or political, broadcast during the 45- or 60-day period pertinent to the complaint. The station will be permitted to redact its records prior to production by deleting the identities of commercial advertisers and other proprietary information not relevant to the resolution of the complaint. Document production will be subject to a protective order limiting its examination to parties designated in the order (as well as the Commission), and prohibiting further dissemination of the information revealed thereby.

5. Within 30 days after the completion of discovery, the complainant will be required to file an amended complaint alleging specific facts based on the information discovered, stating the nature of the section 315(b) violation and the amounts said to be owed. The station complained against will be given a 15-day opportunity to respond. If the parties have not elected to pursue mediation, the Bureau will either impose an appropriate sanction where it finds

the rules have been violated, or issue an appropriate order dismissing the complaint where it finds no violation. In appropriate circumstances, the dispute may be referred to the Administrative Law Judges (ALJs) for resolution.

6. The sanctions available to the Commission for section 315(b) violations (in addition to the rebate of any amounts found to have been charged in violation of section 315(b)) include forfeitures, letter of admonition, short-term renewal, and designation of the station's license for revocation. Any decision rendered by the Bureau or an ALJ may be appealed directly to the full Commission.

7. Accordingly, pursuant to Sections 1, 4(i), 303(r), and 315 (b) and (d) of the Communications Act, 47 U.S.C. 151, 154(i), 303(r), and 315 (b) and (d); Section 5(e) of the Administrative Procedure Act, 5 U.S.C. 556(e); and Section 1.2 of the Commission's rules, 47 CFR 1.2, *It Is Declared* that state causes of action involving alleged violations of the lowest unit charge requirement or of some other duty arising under Section 315(b) are preempted to the extent indicated in the item.

Federal Communications Commission.

Dona R. Searcy,

Secretary

Separate Statement of Commissioner Sherrie P. Marshall

Re: Declaratory Ruling on FCC Preemption of Claims Dependent on Section 315(b).

Today's declaratory ruling should not be interpreted as the generous act of a Federal agency intent on providing shelter to broadcasters charged with price gouging. To the contrary, I write separately to emphasize that the Commission is asserting its jurisdiction over all claims sounding in 47 USC § 315(b) so as to vigorously prosecute such claims, not bury them.

I joined in calling for this full extension of the Commission s preemptive authority only after I was confident that the Commission possessed the legal authority, the administrative wherewithal, and the institutional resolve to adjudicate Section 315 claims fairly and competently. Our declaratory ruling itself recounts in detail the weighty record compiled in support of Commission preemption of all claims arising from the statutory duty of broadcasters to provide candidates with the lowest unit charge for political advertisements.

That ruling also details the efficient, yet fair administrative processes the Commission has established for prompt resolution of bona fide overcharge grievances. Moreover, the fines and rebates we are separately ordering today for past violations of § 315(b) clearly demonstrate this Commission s commitment to enforcing the legal obligations our licensees owe candidates for public office.

While we stand prepared to provide for a timely and thorough resolution of all candidate overcharge claims, I would not deny that the recent surge of such allegations could create a substantial burden on the Commission s ever scarce resources. Thus, I strongly endorse the Commission s offer of an alternative dispute resolution process to both candidates and respondent broadcast stations.

I also wish to underscore the sincerity of the Commission s suggestion that stations and candidates should attempt to reach a mutually satisfactory settlement of their overcharge disputes. As our declaratory ruling explains, the Commission will look favorably upon the private settlement of these disputes in reviewing any overcharge claims brought to its attention. Indeed, in light of the flood of claims that might immediately follow our issuance of this preemption ruling, that Commissioner, for one, will be disinclined to impose any additional sanctions on licensees who act promptly to rebate funds or otherwise redress the bona fide claims of aggrieved candidates pursuant to such a settlement.

Let us move with dispatch to dispose of these past grievances and ensure–through our newly revised political broadcast rules—clear regulatory guidance to broadcasters and candidates alike for the upcoming and future political campaign seasons.

Separate Statement of Commissioner James H. Quello, Dissenting in part.

In re: Exclusive Jurisdiction With Respect to Potential Violations of the Lowest Unit Charge Requirements of Section 315(b) of the Communications Act of 1934, as amended.

By this Declaratory Ruling ("Ruling"), the Commission is taking the important step of reaffirming our exclusive jurisdiction to enforce violations of section 315 of the Communications Act. To the extent it does so, the Ruling is fully supported by law and represents sound policy I can support this aspect of the Ruling without reservation.

I think it is important to emphasize that this action does not represent a new assertion of FCC authority. Section 315 never has been considered to have created a private right of action separate from our administrative processes. *See, e.g. Belluso* v. *Turner Communications Corp.*, 633 F.2d 393, 397 (5th Cir. 1980). Until recently, no one had ever sought a judicial remedy for purported lowest unit charge violations. In the two decades since section 315(b) was enacted, the Commission has provided the sole remedy.

So in many ways this Ruling merely recognizes the obvious. It certainly is no departure from the Commission's historic view of its jurisdiction and statutory responsibilities. This necessarily means that the Commission is not "taking away" any existing remedy.

Conspicuously absent from the Ruling is any discussion of the Commission s existing complaint procedures or any suggestion that they have been in some way inadequate. Perhaps the reasons for this omission is the fact that the Commission did not request comment on the question of procedures, nor did it engage in much internal analysis on this point.[1]

It has been suggested that the FCC is not obligated to provide parties an opportunity to comment on procedural issues. Whether or not this claim is true in this context, the Commission has been rather erratic in this proceeding in deciding when to solicit and when to forego public input. For example, there is no requirement that the Commission receive comments in order to promulgate a declaratory ruling, yet we choose to do so here.

Also, in our Notice of Proposed Rulemaking, the Commission solicited advice on procedures for implementing sponsorship ID and other requirements. In all of our current proceedings, the question of complaint procedures is the only significant subject on which we did not request comment. If, as some have suggested, our current proceedings "may be the most important determinations made since the enactment of the lowest unit charge standard," this omission is exceedingly strange.

At this point, the new procedural guidelines raise more questions than they answer. For example, the Ruling encourages the use of Alternative Dispute Resolution at a time when the Commission's policy on such procedures is essentially conceptual. There is no discussion of how discovery will be limited to relevant documents or how the Commission will enforce such limits. Moreover, although the Ruling expresses concern with the potential administrative burden created by complaints, it establishes a new multi-stage procedure that includes a complaint, discovery, an amended complaint and several levels of Commission decisions including the possibility of hearings.

I dissent from the hastily made decision to adopt procedures because we do not yet know whether the new guidelines will help or make matters worse. Will the new procedures allow candidates to make a prima facie case and obtain quick relief or will they delay matters? Will they encourage the filing of speculative complaints, thus requiring the extension of our abuse of process rules? Will the number of complaints diminish now that the Commission is clarifying the political rules or will the volume of complaints under the new procedures create an administrative nightmare? We simply do not know. And, unfortunately, there was insufficient interest at the Commission in taking the time to find out.

I would have preferred to adopt the Declaratory Ruling on preemption and at the same time, issue a Further Notice to explore these issues. I believe that candidates, broadcasters and other interested parties would have welcomed the opportunity to comment on the issue of procedures.

Ironically, the internal pressure to adopt procedures intensified at the very time that the Commission is clearing up the confusion

[1] To put the issue into some perspective, the Commission adopted the Notice of Proposed Rulemaking on our political broadcasting policies last June. The Commission began examining the issue of jurisdiction in July and released the Notice of Intent to Issue a Declaratory Ruling in October By sharp contrast, a draft order proposing new procedures was circulated less than a week ago at a time when other pressing matters were under consideration.

that prompted this Declaratory Ruling. Along with this Ruling and the Report and Order, the Commission is releasing a number of enforcement actions arising from the 1990 political broadcasting audit. Contrary to the exaggerated claims that 80 percent of television and 50 percent of radio stations overcharged candidates, the Bureau is assessing fines for overcharging in only two cases—about 7 percent of the stations audited. All together, the Bureau is issuing Notices of Apparent Liability to five of the thirty stations we examined, two for lowest unit charge violations and three for political file violations. In short, the level of rule violations by broadcasters is far below what some suggested in the wake of the audit. For this reason I wonder whether the rush to adopt new procedures may be premature.

We are doing the right thing by making clear that the Commission has exclusive jurisdiction to determine both liability and damages in complaints that implicate section 315(b). Although I would not have taken the additional step of adopting procedures just yet, I am hopeful that they can be administered efficiently, and in a way that is fair to all concerned.

[FR Doc. 92-550 Filed 1-13-92; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-928-DR]

Iowa; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa (FEMA-928-DR), dated December 26, 1991, and related determinations.

DATED: January 3, 1992.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: Notice is hereby given that the incident period for this disaster is hereby amended to be October 31, 1991, through and including November 29, 1991.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 92-934 Filed 1-13-92; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-930-DR]

Texas; Amendment to a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA-930-DR), dated December 26, 1991, and related determinations.

DATED: January 4, 1992.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472; (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Texas, dated December 26, 1991, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 26, 1991:

The counties of Brazoria, Burleson, Coryell, Madison, and San Jacinto for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 92-933 Filed 1-13-92; 8:45 am]

BILLING CODE 6718-02-M

State and Local Programs and Support Board of Visitors for the Emergency Management Institute Notice of Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name: Board of Visitors (BOV) for the Emergency Management Institute (EMI).

Dates of Meeting: January 23-24, 1992.

Place: Federal Emergency Management Agency, National Emergency Training Center, Emergency Management Institute, Conference Room, Building N, Emmitsburg, Maryland 21727.

Time:

January 23—8:30 a.m. to 5 p.m.

January 24—8:30 a.m. to 12 noon.

Proposed Agenda: The primary focus of the meeting will be the preparation of the Board's 1991 Annual Report.

The meeting will be open to the public with approximately 10 seats available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact the Office of the Superintendent, Emergency Management Institute, 16825 South Seton Avenue, Emmitsburg, Maryland 21727 (telephone number, 301-447-1251) on or before January 10, 1992.

Minutes of the meeting will be prepared and will be available for public veiwing in the Superintendent's Office, Emergency Management Institute, Federal Emergency Management Agency, Building N, National Emergency Training Center, Emmitsburg, Maryland 21727. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: December 2, 1991.

Grant C. Peterson,

Associate Director, State and Local Programs and Support.

[FR Doc. 92-936 Filed 1-13-92; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL HOUSING FINANCE BOARD

[No. FHFB 92-3]

Affordable Housing Program

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: The Federal Housing Finance Board ("Finance Board") is giving notice of the 1992 closing dates for applications for funding under the Affordable Housing Program ("AHP") during 1992. This notice is given to supplement notices provided by the Federal Home Loan Banks ("FHLBanks") pursuant to 12 CFR 960.4(a). The Finance Board will announce AHP funding levels for 1992 in early 1992.

DATES: See AHP application deadlines in **SUPPLEMENTARY INFORMATION.**

ADDRESSES: See FHLBank addresses in the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Sylvia Martinez, Director, Housing Finance Directorate, (202) 408-2825, or Richard Tucker, Deputy Director, Housing Finance Directorate, (202) 408-2848, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: In accordance with regulations set forth in 12 CFR part 960, AHP funding is awarded based on FHLBank District-wide competitions held twice each year. Each FHLBank is allowed to choose two quarters of the year (January, April, July, and October) in which to conduct the competitions. Applications must be received by the 15th day of the quarter or by the next business day if the 15th day falls on a weekend or holiday. The respective deadlines for AHP

applications, selected by the individual FHLBanks for 1992, are listed below along with the individual FHLBank addresses and Community Investment Officers ("CIOs").

For additional specific information concerning the AHP, Community Investment Program, and other FHLBank programs to promote affordable housing and community development, members and the public may contact the individual FHLBank CIOs.

1992 AHP Application Deadlines

FHLBank	Deadlines	
	1st AHP round	2nd AHP round
FHLBank of Boston, Post Office Box 9106, Boston, MA 02111, CIO: David Parish, Telephone: (617) 330-9872.	April 15	October 15.
FHLBank of New York, One World Trade Center, 103rd Floor, New York, NY 10048, CIO: Donald Wolff, Telephone: (212) 912-4600.	April 15	October 15.
FHLBank of Pittsburgh, 625 West Ridge Pike, Suite B-107, Conshohocken, PA 19428, CIO: Calvin Baker, Telephone: (215) 941-7116.	January 15	July 15.
FHLBank of Atlanta, Post Office Box 105565, Atlanta, GA 30348, CIO: Robert Warwick, Telephone: (404) 888-8435.	January 15	July 15.
FHLBank of Cincinnati, Post Office Box 598, Cincinnati, OH 45201, CIO: Carol Peterson, Telephone: (513) 852-7615.	January 15	July 15.
FHLBank of Indianapolis, Post Office Box 60, Indianapolis, IN 46205-0060, CIO: Michael Thomas, Telephone: (317) 465-0430.	January 15	July 15.
FHL Bank of Chicago, 111 East Wacker Drive, Suite 800, Chicago, IL 60601, CIO: Charles Hill, Telephone: (312) 565-5705.	April 15	October 15.
FHL Bank of Des Moines, 907 Walnut Street, Des Moines, IA 50309, CIO: Nancy Grandquist, Telephone: (515) 281-1109.	April 15	October 15.
FHL Bank of Dallas, 5605 N. MacArthur Boulevard, 9th Floor, Irving, TX 75038, CIO: Clifford Giles, Telephone: (214) 714-8645.	April 15	October 15.
FHL Bank of Topeka, Post Office Box 176, Topeka, KS 66601, CIO: Chris Imming, Telephone: (913) 233-0507 ext. 565.	April 15	October 15.
FHL Bank of San Francisco, 307 East Chapman Avenue, Orange, CA 92666, CIO: James Yacenda, Telephone: (714) 633-1271.	April 15	October 15.
FHL Bank of Seattle, 1501 Fourth Avenue, Seattle, WA 98101-1693, CIO: Judy Chaney, Telephone: (206) 340-8737.	April 15	October 15.

Dated: January 8, 1992.

By the Federal Housing Finance Board.

J. Stephen Britt,

Executive Director.

[FR Doc. 92-880 Filed 1-13-92; 8:45 am]

BILLING CODE 6725-01-M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89-777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Costa Cruise Lines N.V., Costa Crociere S.P.A. and Italian Cruise Lines S.R.L., World Trade Center, 80 S.W. 8th Street, Miami, FL 33130-3097

Vessel: Costa Classica

Dated: January 9, 1992.

Joseph C. Polking,

Secretary.

[FR Doc. 92-922 Filed 1-13-92; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 92-01]

American President Lines, Ltd. v. Cyprus Copper Co. and Cyprus Minerals Co.; Filing of Complaint and Assignment

Notice is given that a complaint filed by American President Lines, Inc. ("Complainant") against Cyprus Copper Company and Cyprus Minerals Company ("Respondents") was served January 8, 1992. Complainant alleges that Respondents engaged in violations of section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. 1709(a)(1), by obtaining ocean transportation at less than the applicable rates and charges as a result of misdescribing cargo.

This proceeding has been assigned to Administrative Law Judge Charles E. Morgan ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by January 8, 1993, and the final decision of the Commission shall be issued by May 10, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 92-842 Filed 1-13-92; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 92-02]

Gulf Atlantic Transport Corp. Possible Violations of Section 16, Second, of the Shipping Act, 1916; Order of Investigation and Hearing

Between April 1987 and July 1991, Gulf Atlantic Transport Corporation ("Gulf Atlantic") was a vessel operating common carrier in the United States' domestic offshore trade and had a tariff, FMC–F No. 3, on file with the Commission. The company currently is located in Jacksonville, Florida.[1]

It appears that on at least 10 occasions between May 1987 and June 1988, as set forth in more detail in appendix A attached hereto and made a part hereof, Gulf Atlantic violated section 16, Second, Shipping Act, 1916, 46 U.S.C. app. 815, by allowing a person to obtain transportation for property from Mobile, Alabama, Port Arthur, Texas, or Houston, Texas, to Puerto Rico at less than the regular rates then established in Gulf Atlantic's Tariff, FMC–F No. 3.

Now therefore it is ordered, That pursuant to sections 1, 16, 18, 22, 27 and 32 of the Shipping Act, 1916, 46 U.S.C. app. 801, 815, 817, 821, 826 and 831, an investigation is hereby instituted to determine:

(1) Whether Gulf Atlantic Transport Corporation ("Gulf Atlantic") violated section 16, Second, of the shipping Act, 1916;

(2) Whether, in the event Gulf Atlantic is found to have violated section 16, Second, of the Shipping Act, 1916, civil penalties should be assessed and, if so, the amount of such penalties;

It is further ordered, That a public hearing be held in this proceeding and that this matter be assigned for hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges in compliance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Administrative Law Judge only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further ordered, That Gulf Atlantic is designated Respondent in this proceeding;

It is further ordered, That the Commission's Bureau of Hearing Counsel is designated a party to this proceeding;

It is further ordered, That other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72;

It is further ordered, That all further notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on parties of record;

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573, in accordance with rule 188 of the Commission's Rules of Practice and Procedure, 46 CFR 502.118, and shall be served on parties of record;

It is further ordered, That in accordance with rule 61 of the Commission's Rules of Practice and Procedure, the initial decision of the Administrative Law Judge shall be issued by January 8, 1993, and the final decision of the Commission shall be issued by May 10, 1993.

By the Commission.[2]

Joseph C. Polking,

Secretary.

[1] It appears that Gulf Atlantic is engaged in a towing operation at the location.

[2] Commissioner Quartel's dissent is attached.

APPENDIX A

Vessel/voyage	Bill of lading	Date	Person (shipper/consignee)	Commodity
Gatco Antilles V. 1	No. 5	5/21/87	United States Gypsum Company	Plaster
Gatco Antilles V. 2	No. 8	6/19/87	First International Timber Sales, Inc	Lumber
Gatco Antilles V. 2	No. 13	6/19/87	First International Timber Sales, Inc	Lumber
Gatco Antilles V. 2	No. 5	6/24/87	First International Timber Sales, Inc	Lumber
Gatco Antilles V. 3	No. 20	7/23/87	Transcontinental Steel Company	Steel Material
Gatco Antilles V. 6	No. 40	11/18/87	Transcontinental Steel Company	Steel Beams
Gatco Antilles V. 7	No. 24	12/23/87	Transcontinental Steel Company	Steel Beams
Caribe V/208–0	No. 2	6/20/88	Transcontinental Steel Company	Pine Posts
Caribe V/208–0	No. 3	6/20/88	Transcontinental Steel Company	Crossarms
Caribe V/208–0	No. 4	6/20/88	Transcontinental Steel Company	Pine Poles

Commissioner Quartel Dissenting:

The party this Commission today chooses to investigate is one over whom we no longer even have regulatory authority. Gulf Atlantic Transport Corporation ceased filing tariffs with this Commission in July of 1990 and ceased doing business as a carrier altogether in 1991. We have nevertheless been urged, and the majority has decided, to reach back with our regulatory arm and initiate an investigation to determine if we can sometime in the future impose penalties on this former carrier for no other reason, as far as I can discern, except procedural pique and pettiness.

Gulf Atlantic in fact attempted settlement negotiations with us through two different law firms based on their arguable contention that the transportation of goods in question was premised on a separate and bona fide charter agreement. Rather than agree to settle and be done with this matter, we have instead upped the ante and commenced yet another formal investigation which costs not only the public, for the unnecessary use of scarce staff resources, but also the carrier.

Furthermore while case law may be consistent in disallowing an apparent common carrier to contract independently under circumstances similar to these, I believe we should have had a full Commission meeting on this case to at least debate the premises of the past decisions which are arguably based on now disputed regulatory theories. I consider the outcome in this case as another example of a Commission weakened by excessive

delegation of authority to its staff, the latter which evidences a continuing attitude of regulatory zealotry and indifference to the needs of the public at large.

[FR Doc. 92-877 Filed 1-13-92; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review: Extension of Comment Period

SUMMARY: On December 10, 1991, the Board of Governors of the Federal Reserve System published for comment the proposed addition of a supplement to the quarterly Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002; OMB No. 7100-0032). The report is collected and processed by the Federal Reserve on behalf of all three federal bank regulatory agencies. The new supplement (FFIEC 002S; OMB No. 7100-0032) would collect information on assets and liabilities of non-U.S. branch that is managed or controlled by a U.S. branch or agency of a foreign bank. The notice provided that the comment period regarding this proposed supplement would expire on January 10, 1992. The Board has received a request from the public to extend the public comment period to enable the public to prepare adequate comments on the proposed supplement in writing. In response to these requests, the Secretary of the Board, acting pursuant to delegated authority, has decided to extend the public comment period on this supplement to January 31, 1992.

DATES: The comment period has been extended, and now expires January 31, 1992.

ADDRESSES: Comments, which should refer to OMB Docket No. 7100-0032, should be sent both to the agency clearance officer and to the OMB desk officer, as follows:

Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics. Board of Governors of the Federal Reserve System. Washington, DC 20551 (202-452-3829).

OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208. Washington DC 20503 (202-395-7340).

FOR FURTHER INFORMATION CONTACT: Henry S. Terrell, Senior Economist (202-452-3785), Division of International Finance, and Martha C. Bethea, Deputy Associate Director (202-452-3181), Division of Research and Statistics.

By order of the Secretary of the Board, acting pursuant to delegated authority for the Board of Governors of the Federal Reserve System, January 7, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-912 Filed 1-13-92; 8:45 am]
BILLING CODE 6210-01-M

Sylvan J. Diesk, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 4, 1992.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Sylvan J. Dlesk, Wheeling, West Virginia; to acquire an additional 0.20 percent of the voting shares of First West Virginia Bancorp, Inc., Wheeling, West Virginia, for a total of 10.07 percent.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. David Ray and Elizabeth Ann Tritten, Waynesville, Missouri; to acquire an additional 29.66 percent of the voting shares of Tritten Bancshares, Inc., St. Robert, Missouri, for a total of 34.75 percent, and thereby indirectly acquire First State Bank of St. Robert, St. Robert, Missouri.

2. Frank E. and Beverly Ann Wiles, Pleasant Hope, Missouri; to acquire 34.75 percent of the voting shares of Tritten Bancshares, Inc., St. Robert, Missouri, and thereby indirectly acquire First State Bank of St. Robert, St. Robert, Missouri.

Board of Governors of the Federal Reserve System, January 8, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-913 Filed 1-13-92; 8:45 am]
BILLING CODE 6210-01-F

FBOP Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 4, 1992.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. FBOP Corporation, Oak Park, Illinois; to acquire Sterling Federal Savings and Loan Association of

Chicago, Chicago, Illinois, and thereby engage in owning, controlling or operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 8, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-914 Filed 1-13-92; 8:45 am]

BILLING CODE 6210-01-F

Grupo Financiero Banamex Accival, S.A. de C.V.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that the Board has determined to be closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 4, 1992.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Grupo Financiero Banamex Accival, S.A. de C.V., Mexico, D.F., Mexico; to become a bank holding company by acquiring 100 percent of the voting shares of Banco Nacional de Mexico, S.A., Mexico, D.F., Mexico; Banamex Holding Company, Los Angeles, California; and Banamex USA Bancorp, Los Angeles, California; and thereby indirectly acquire California Commerce Bank, Los Angeles, California.

In connection with this application, Applicant also proposes to acquire ACCI Securities, Inc., Boulder, Colorado, and thereby engage in full services securities brokerage, in which securities brokerage services and investment advice incidental thereto are provided on a combined basis, pursuant to §§ 225.25(b)(4) and (b)(15) of the Board's Regulation Y; and private placement services, soliciting purchasers in the private placement of all types of securities pursuant to the conditions imposed in *NCNB Corporation*, 76 Federal Reserve Bulletin 864 (1990).

Board of Governors of the Federal Reserve System, January 8, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-915 Filed 1-13-92; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 91F-0479]

BASF Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that BASF Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of polyamide-ethyleneimine-epichlorohydrin resin prepared by reacting adipic acid and *N*-(2-aminoethyl)-1,2-ethanediamine, to form a basic polyamidoamine which is modified by reaction with ethyleneimine, and further reacted with formic acid and (chloromethyl)oxirane-α-hydro-ω-hydroxypoly(oxy-1,2-ethanediyl). The resin is intended for use as a retention aid in the manufacture of paper and paperboard intended to contact dry food.

FOR FURTHER INFORMATION CONTACT: Daniel N. Harrison, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9500.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP OB4193) has been filed by BASF Corp., Eight Campus Dr., Parsippany, NJ 07054. The petition proposes to amend the food additive regulations to provide for the safe use of a polyamide-ethyleneimine-epichlorohydrin resin prepared by reacting adipic acid and *N*-(2-aminoethyl)-1,2-ethanediamine, to form a basic polyamidoamine which is modified by reaction with ethyleneimine, and further reacted with formic acid and (chloromethyl)oxirane-α-hydro-ω-hydroxypoly(oxy-1,2-ethanediyl). The resin is intended for use as a retention aid in the manufacture of paper and paperboard intended to contact dry food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: January 2, 1992.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 92-893 Filed 1-13-92; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Notice of Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: ORLANDO DISTRICT OFFICE, chaired by Lynne C. Isaacs, Public

Affairs Specialist. The topic to be discussed is food labeling.

DATES: Wednesday, January 22, 1992, 10 a.m. to 12 m.

ADDRESSES: University of North Florida, College of Health, Bldg. 14, rm. 1542, 4567 St. Johns Bluff Rd., South Jacksonville, FL 32216.

FOR FURTHER INFORMATION CONTACT: Lynne C. Isaacs, Public Affairs Specialist, Food and Drug Administration, 7200 Lake Ellenor Dr., suite 120, Orlando, FL 32809, 407–648–6922.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: January 9, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy

[FR Doc. 92–890 Filed 1–13–92; 8:45 am]

BILLING CODE 4160–01–M

Consumer Participation; Notice of Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: NASHVILLE DISTRICT OFFICE, chaired by Raymond K. Hedblad, District Director. The topic to be discussed is food labeling.

DATES: Friday, January 17, 1992, 9:30 a.m. to 12 m.

ADDRESSES: John Sevier Bldg., Conference Rm. A, Ground Floor, 500 Charlotte Ave., Nashville, TN 37243.

FOR FURTHER INFORMATION CONTACT: Sandra S. Baxter, Public Affairs Specialist, Food and Drug Administration, 297 Plus Park Blvd., Nashville, TN 37217, 615–781–5372.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: January 9, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy

[FR Doc. 92–891 Filed 1–13–92; 8:45 am]

BILLING CODE 4160–01–M

Consumer Participation; Notice of Open Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer exchange meeting: ORLANDO DISTRICT OFFICE, chaired by Lynne C. Isaacs, Public Affairs Specialist. The topic to be discussed is food labeling.

DATES: Friday, January 31, 1992, 10 a.m. to 12 m.

ADDRESSES: Manatee County Central Library, 1301 Barcarrota Blvd., Bradenton, FL 34205.

FOR FURTHER INFORMATION CONTACT: Lynne C. Isaacs, Public Affairs Specialist, Food and Drug Administration, 7200 Lake Ellenor Dr., suite 120, Orlando, FL 32809, 407–648–6922.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials, to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's district offices, and to contribute to the agency's policymaking decisions on vital issues.

Dated: January 9, 1992.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 92–892 Filed 1–13–92; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

Biomedical Research Symposium; Meeting

Pursuant to Public Law 92–463, notice is hereby given of a symposium being sponsored jointly by the National Institutes of Health (NIH), the Department of Health and Human Services, and the Southwest Foundation for Biomedical Research, on February 3–4, 1992, at the Henry B. Gonzalez Convention Center, San Antonio, Texas 78205. The symposium, "Today's Opportunities, Tomorrow's Health: The Future of Biomedical Research in America," will be devoted to a discussion of (1) the future of biomedical and behavioral research, and (2) the draft NIH Strategic Plan. Symposium sessions on February 3 will be held from 9 a.m. to 12:15 p.m. and from 1:30 p.m. to 5:30 p.m., and on February 4 from 8:30 a.m. to 12 p.m. and 1 p.m. to 3 p.m.

The symposium will be open to members of the public who pay the registration fee of $250 which will defray the cost of printing and mailing of documents and the provision of meals to attendees. Arrangements may be made for free attendance at a limited number of sessions if space permits and if meals are not involved and printing and mailing of documents is not necessary. The registration fee is being waived for members of the media who wish to cover the meeting.

Further information may be obtained by contacting Duncan Wimpress, Ph.D., President, Southwest Foundation for Biomedical Research, Post Office Box 28147, San Antonio, Texas 78228, (512) 674–1410.

Dated: January 7, 1992.

Bernadine Healy,

Director, NIH.

[FR Doc. 92–847 Filed 1–13–92; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N–92–3366; FR–3184–N–01]

Section 202 Loans for Housing for the Elderly or Handicapped; Fiscal Year 1992 Loan Interest Rate

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of section 202 loan interest rate.

SUMMARY: Under 24 CFR 885.410(g), the interest rate for a loan for housing for the elderly or handicapped under section 202 of the Housing Act of 1959 is set at one of two rates: (1) A fixed annual interest rate announced by HUD; or (2) the optional interest rate elected by the Borrower and computed by HUD at the time of the Borrower's request for conditional or firm commitment. This document establishes 8.375 percent as the fixed annual interest rate for Fiscal Year 1992. (Information concerning the calculation of the optional interest rate will be provided to Borrowers upon request. See § 885.410(h).)

FOR FURTHER INFORMATION CONTACT: Robert W. Wilden, Director, Housing for

the Elderly and Handicapped People Division, Office of Elderly and Assisted Housing, 451 Seventh Street, SW., Washington, DC 20410–8000. Telephone (202) 708–2730, or (202) 708–4594 (voice/TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Under 24 CFR 885.410(g), the interest rate for a loan for housing for the elderly or handicapped under section 202 of the Housing Act of 1959 is set at one of two rates: (1) A fixed annual interest rate announced by HUD; or (2) the optional interest rate elected by the Borrower and computed by HUD at the time of the Borrower's request for conditional or firm commitment. This document announces HUD's determination of the annual interest rate. (Information concerning the calculation of the optional interest rate will be provided to Borrowers upon request. See § 885.410(h).)

The annual interest rate fixed under § 885.410(g)(1) may not exceed: (1) The average yield on the most recently issued 30-year marketable obligations of the United States during the three-month period immediately preceding the fiscal year in which the loan is made (adjusted to the nearest one-eighth of one percent) plus an allowance to cover administrative costs and probable losses under the program. (This allowance has been determined by the Secretary of Housing and Urban Development to be one-fourth of one percent (0.25 percent) per annum for both the construction and permanent loan periods); and

(2) Any applicable statutory ceiling on the loan interest rate including the allowance to cover administrative costs and probable losses (see § 885.410(g)(1)(ii)). The current statutory ceiling is 9.25 percent per annum.

The average yield on the interest-bearing obligations of the United States described in paragraph (1) was 8.125 percent during the last three months of Fiscal Year 1991. This rate, plus the 0.25 percent allowance for administrative costs and probable losses, yields an interest rate of 8.375 percent. Accordingly, this Notice establishes the annual interest rate for section 202 loans made during Fiscal Year 1992 at 8.375 percent per annum.

Under 24 CFR 50.20(1), an environmental finding is not necessary because the statutorily required establishment of interest rates is among matters that are categorically excluded from the environmental requirements of 24 CFR part 50.

Authority: Sec. 202, Housing Act of 1959 (12 U.S.C. 1701q); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: January 7, 1992.

Arthur J. Hill,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 92–741 Filed 1–13–92; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Availability of the Draft Oil and Gas Resource Management Plan/Environmental Impact Statement Amendment; Miles City District; MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with section 202 of the Federal Land Policy and Management Act of 1976 and section 102(c) of the National Environmental Policy Act of 1969, the Draft Resource Management Plan/Environmental Impact Statement (RMP/EIS) Amendment has been prepared for the Billings, Powder River, and South Dakota Resource Areas. The RMP/EIS Amendment describes and analyzes future options for managing the leasing of oil and gas on approximately 1.7 million acres of BLM surface and 4.6 million acres of federal minerals in south-central and southeastern Montana and the State of South Dakota. The RMP/EIS Amendment provides a comprehensive plan for managing the federal oil and gas resources administered by BLM.

PUBLIC PARTICIPATION: Copies are available from the Billings Resource Area Office, 810 East Main Street, Billings, MT 59105–3395, telephone (406) 657–6262. Public reading copies are available for review at the following BLM locations:

Office of External Affairs, Main Interior Building, room 5600, 18th and C Streets, NW., Washington, DC 20240–9998.

External Affairs Office, Montana State Office, P.O. Box 36800, 222 North 32nd Street, Billings, MT 59107–6800.

Miles City District Office, Garryowen Road, P.O. Box 940, Miles City, MT 59301–0940.

South Dakota Resource Area, 310 Roundup Street, Belle Fourche, South Dakota 57717–1698.

Powder River Resource Area, Miles City Plaza, Miles City, Montana 59301–2844.

Billings Resource Area, 810 East Main Street, Billings, Montana 59105–3395.

Public reading copies are available for review at each county library located in Big Horn, Carbon, Carter, Custer, Fallon, Golden Valley, Musselshell, Powder River, Rosebud, Prairie, Stillwater, Sweet Grass, Treasure, Yellowstone, and Wheatland Counties in Montana; and all 66 counties of South Dakota.

Written comments on the Draft RMP/EIS Amendment will be accepted for 90 days following the date the Environmental Protection Agency publishes the Notice of Filing of the Draft Amendment in the **Federal Register.** Comments can also be presented at three public meetings to be held:

Date	Time	Location
March 10, 1992	7 p.m.	BLM Resource Area Office, 310 Roundup Street, Belle Fourche, South Dakota.
March 11, 1992	7 p.m.	BLM District Office, Garryowen Road, Miles City, Montana.
March 12, 1992	7 p.m.	Quality Inn, 2036 Overland Avenue, Billings, Montana.

ADDRESSES: Written comments on the document should be addressed to: Lloyd F. Emmons, Project Manager, Bureau of Land Management, Billings Resource Area Office, 810 East Main, Billings, Montana 59105–3395.

FOR FURTHER INFORMATION CONTACT: Lloyd F. Emmons, Project Manager, Bureau of Land Management, Billings Resource Area Office, 810 East Main, Billings, Montana 59105–3395, (406) 657–6262.

SUPPLEMENTARY INFORMATION: The Draft RMP/EIS Amendment analyzes four alternatives to resolve nine issues. The alternatives can be summarized as: (A) (No Action) is the continuation of present management decisions; (B) emphasizes the protection of natural and cultural resources while allowing the development of oil and gas; (C) emphasizes the availability of the public land for oil and gas exploration and development with minimum restrictions;

(D) the preferred alternative proposes a balance between the demands of oil and gas resource development and the protection of sensitive area and other resources. Each alternative represents a complete management plan for the planning area. The nine issues are as follows: Other resource values to be considered in leasing oil and gas, what impacts will be permitted to resource values, what areas should be opened or closed to oil and gas activity, resolution of conflicts between oil and gas and other resource values, landowner involvement in decisions affecting split-estate lands, determination of Reasonably Foreseeable Development of oil and gas resources and the impacts associated with development, identification of mitigating measures to minimize impacts from oil and gas resource development, how the management of oil and gas resources relates to other multiple-use management decisions, and handling of hazardous materials related to the exploration and development of oil and gas resources.

The RMP/EIS Amendment evaluates two proposed Areas of Critical Environmental Concern (ACEC). Nominations of both met the relevance and importance criteria and were studied for special management.

The Meeteetse Spires Outstanding Natural Area would be designated an ACEC to protect the scenic quality of the Meeteetse Spires pinnacles and the habitat of two species of rare plants, *Shoshonea pulvinata* and *Townsendia spathulata*. No new oil and gas leases will be issued within the boundaries of the proposed ACEC. Current leases will expire in 1995 and 1996. The proposed ACEC would be withdrawn from mineral entry. Other resource uses would be permitted, providing there are no threats to the populations of rare plants or safety hazards to the users.

The Weatherman Draw Rock Art Complex would be designated an ACEC to protect the petroglyphic and pictographic cultural sites and the significant historic, cultural, and scenic values of the complex. Six hundred acres of the proposed ACEC have been withdrawn from mineral entry. The BLM would pursue an additional withdrawal from mineral entry on the remaining portion of the proposed ACEC. Oil and gas leasing would occur with a No Surface Occupancy stipulation for the proposed ACEC. Other resource uses would be permitted unless they conflict with the protection or management of the complex.

Management prescriptions for these potential ACECs vary by alternative and are described in the RMP/EIS Amendment.

Public participation has occurred throughout the RMP/EIS Amendment process. A Notice of Intent was filed in the **Federal Register** in November 1988. Since that time public meetings, mailings, and briefings have been conducted to solicit comments and ideas. All comments presented throughout the process have been considered.

This Notice meets the requirements of 43 CFR 1610.7–2 for designation of proposed ACECS.

Dated: December 16, 1991.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 92–908 Filed 1–13–92; 8:45 am]

BILLING CODE 4310-DN-M

[UT-020-02-4320-02]

Salt Lake District, Grazing Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Grazing Advisory Board meeting.

SUMMARY: Notice is hereby given in accordance with Public Law 92–463 that the Salt Lake District Grazing Advisory Board will be meeting on February 12, 1992. The meeting will begin at 9:30 a.m. at the Salt Lake District, Bureau of Land Management office, at 2370 South 2300 West, Salt Lake City, Utah.

The purpose of the meeting will be to review range improvement project proposals for funding consideration by the Salt Lake District Grazing Advisory Board.

The meeting is open to the public. Interested persons may make oral statements at the meeting between 10 a.m. and 10:30 a.m., or file a written statement for the Board's consideration. Those wishing to make statements to the Board, are requested to contact Glade Anderson at (801) 977–4300 by February 7th so adequate time can be included on the agenda.

Deane H. Zeller,

Salt Lake District Manager.

[FR Doc. 92–886 Filed 1–13–92; 8:45 am]

BILLING CODE 4310-DQ-M

Bureau of Reclamation

Withdrawal of Notices of Intent

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of withdrawal of notices of intent.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as ameded, the Bureau of Reclamation is withdrawing the following list of notices of intent. Environmental impact statement's will not be prepared on these projects which have become inactive or for which a finding of no significant impact has been prepared.

FEDERAL REGISTER NOTICE OF INTENT

Dated	Citation	Project
04/30/79	44 FR 256275	Allen Camp Unit, Central Valley Project, California (EIS Canceled).
10/24/79	44 FR 61264	Apple Creek Unit, Pick-Sloan Missouri Basic Program, North Dakota (EIS Canceled.
01/23/84	49 FR 2834	Texas Big Sandy Project, Texas (EIS Canceled).
10/18/84	49 FR 40979	Parker Division Channel Modification Project, Colorado Front Work and Levee System, Arizona-California (1990 FONSI).
03/13/84	49 FR 9486	New Melones Unit Supplement, Central Valley Project, California (EIS Canceled).
05/28/85	50 FR 21669	Milk River Project, Pick-Sloan Missouri Basis Program, Montana (EIS Canceled).
08/08/85	50 FR 32121	Bedia Project, Texas (EIS Canceled).
08/08/85	50 FR 32121	Fallon Indian Reservation Irrigation and Drainage System, Newlands Project, Nevada (EIS Canceled).
4/22/86	51 FR 15073	Little John's Creek (Central San Joaquin Loan) (also known as Farmington Canal Project), Small Reclamation Projects, Act, California (EIS Canceled).
09/16/86	51 FR 32855	Spring Canyon Pumped Storage Project, Arizona (EIS Canceled).
09/10/87	52 FR 34322	Los Banos Grandes, Central Valley Project, California (EIS Canceled).

FOR FURTHER INFORMATION CONTACT: Dr. Wayne O. Deason (Manager of Environmental Services, U.S. Bureau of Reclamation, P.O. Box 25007, Denver CO 80225), (303) 236–9336.

Dated: December 27, 1991.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 92–948 Filed 1–13–92; 8:45 am]

BILLING CODE 4310–09–M

Milltown Hill Project, Douglas County, OR

AGENCY: Bureau of Reclamation (Interior) in cooperation with Bureau of Land Management (Interior).

ACTION: Notice of correction on draft environmental impact statement (DEIS): INT–DES 91–33.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (as amended), the Bureau of Reclamation (Reclamation), in cooperation with the Bureau of Land Management, prepared a draft environmental impact statement (DEIS) for the Milltown Hill Project, Douglas County, Oregon. The DEIS was filed with the Environmental Protection Agency on December 11, 1991. The Notice of Availability appeared in the **Federal Register** (volume 56, page 65275) on December 16, 1991. The number assigned to the DEIS by the Department of the Interior was inadvertently omitted from that notice. As indicated above, that number is: INT–DES 91–33.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas James (Regional Environmental Officer, Pacific Northwest Region, Boise, Idaho); telephone: (208) 334–1207.

Dated: December 27, 1991.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 92–713 Filed 1–13–92; 8:45 am]

BILLING CODE 4310–09–M

Withdrawal of Draft Environmental Impact Statements

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of cancellation of draft environmental impact statements.

SUMMARY: Pursuant to section 102(2)(C) of the Ntaional Environmental Policy Act of 1969, as amended, the Bureau of Reclamation is canceling the following list of draft environmental impact statements. Final environmental impact statements will not be prepared since the projects have become inactive.

FEDERAL REGISTER NOTICE OF AVAILABILITY

Date	Citation	Project
09/30/76	41 FR 43205	Savery-Pot Hook Project, Colorado River Storage Project, Colorado and Wyoming (DES 76–37, filed 09/27/76) (EIS Canceled).
07/24/78	43 FR 31993	Unintah Unit, Central Utah Project, Utah (DES 78–27, filed 07/19/78) (EIS Canceled).
04/10/84	49 FR 14208	Santa Margarita Project, California, Supplement (DES 84–19, filed 04/05/84) (EIS Canceled).
03/11/86	51 FR 8373	Garrison Diversion Unit, Pick-Sloan Missouri Basin Program, Commission Plan, North Dakota, (DES 86–09, filed 03/06/86) (EIS Canceled).
10/07/86	51 FR 35703	Central South Dakota Water Supply System (CENDAK) Unit, Pick-Sloan Missouri Basin Program, South Dakota (DES 86–39, filed 10/02/86) (EIS Canceled).
12/02/86	51 FR 43475	North Side Pumping Division Extension, Minidoka Project, Idaho (DES 86–46, filed 11/25/86) (EIS Canceled).
01/02/87	52 FR 178	Garrison Diversion Unit, Pick-Sloan Missouri Basin Program, North Dakota, Draft Supplement to DES 86–09 (DES 86–51, filed 12/30/86) (EIS Canceled).

FOR FURTHER INFORMATION CONTACT: Dr. Wayne O. Deason (Manager of Environmental Services, U.S. Bureau of Reclamation, P.O. Box 80225, Denver CO 80225), (303) 236–9336.

Dated: December 27, 1991.

Joe D. Hall,

Deputy Commissioner.

[FR Doc. 92–949 Filed 1–13–92; 8:45 am]

BILLING CODE 4310–09–M

DEPARTMENT OF INTERIOR

Minerals Management Service

Alaska OCS Region; Outer Continental Shelf Advisory Board, Alaska Regional Technical Working Group Meeting

AGENCY: Minerals Management Service, Alaska OCS Region, Interior.

ACTION: Outer Continental Shelf Advisory Board, Alaska Regional Technical Working Group Committee; notice for meeting.

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Public Law 92–463.

The Alaska Regional Technical Working Group (RTWG) Committee of the Outer Continental Shelf (OCS) Advisory Board is scheduled to meet from 1:30 p.m. to 4:30 p.m., January 29, 1992, in room 311 of the Sheraton Anchorage Hotel, 401 E. 6th Avenue, Anchorage, Alaska. The Alaska RTWG is one of six such committees of the OCS Advisory Board that provides advice to the Director of MMS about technical matters of regional concern regarding OCS prelease and postlease sale activities.

Topics which may be addressed at the meeting are:

(a) Alaska OCS Region issues and activities.

(b) Oil Pollution Act of 1990.

(c) Minerals Management Service Rulemaking.

The Alaska RTWG meeting will be open to the public, although seating may be limited. Interested persons may make oral or written presentations to the committee. A request to make a presentation should be made no later than January 22, 1992, to Alan D. Powers, Regional Director, Alaska OCS Region, 949 East 36th Avenue, room 110, Anchorage, Alaska 99508–4302, and should be accompanied by a written summary of the presentation.

Minutes of the meeting will be available 70 days after the meeting for public inspection and copying at the Alaska OCS Region Library, 949 East 36th Avenue, Anchorage, Alaska, and at the office of OCS Advisory Board Support, MMS, Department of the Interior, 18th and C Streets, NW., Washington, DC.

Dated: December 24, 1991.

Alan D. Powers,

Regional Director, Alaska OCS Region.

[FR Doc. 92–909 Filed 1–13–92; 8:45 am]

BILLING CODE 4310–MR–M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. MC-5 (Sub No. 11)]

Reminder of Requirements Governing Insurance and Surety Companies Making ICC Filings

AGENCY: Interstate Commerce Commission.

ACTION: Notice.

SUMMARY: The ICC reminds the public that certificates of insurance filed by insurance/surety companies that fail to meet the ICC's regulations at 49 CFR 1043.8 and 1084.5, governing financial responsibility requirements for insurance/surety companies, as modified and clarified in the ICC's decision at 7 I.C.C. 2d 589, served June 7, 1991, will be revoked on February 24, 1992.

EFFECTIVE DATE: January 14, 1992.

FOR FURTHER INFORMATION CONTACT: E. C. Fernandez (202) 927-5642 (TDD for hearing imparied: (202) 927-5721).

SUPPLEMENTARY INFORMATION: The ICC, in its decision at 7 I.C.C. 2d 589, revised its regulations at 49 CFR 1043.8 and 1084.5, governing financial responsibility requirements for insurance/surety companies. The decision interpreted the term "authorized" as used in those regulations to mean an insurance/surety company that is licensed or admitted in at least one state to issue insurance policies or bonds, and clarified that the ICC will accept certificates of insurance and surety bonds issued only by licensed or admitted companies. The decision ordered that certificates of insurance filed by companies that fail to meet the new regulations would be revoked after the dissolution by the United States Court of Appeals for the District of Columbia Circuit of its injunction, issued in *Owner-Operator Services, Inc., et al.* v. *ICC*, No. 90-1274, that prevented the implementation of those regulations, and that all motor carriers would be given specific notice of revocation of their certificates of insurance at least 30 days prior to the date of expiration. The D.C. Circuit, by order of November 6, 1991, certified copy servced by the Clerk of that Court of December 24, 1991, has dissolved that injunction. Thus, in accordance with the deadlines adopted by the ICC in its decision, the public is reminded that all noncomplying certificates of insurance/surety bond will be revoked at 11:59 p.m. on February 24, 1992, and that operating authorities of ICC licensed motor carriers remain in effect only while appropriate insurance is in effect and on file with the ICC.

By the Commission, Sidney L. Strickland, Jr.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-960 Filed 1-13-92; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31991]

CSX Corp., CSX Transportation, Inc. and The Carrollton Railroad—Control—Transkentucky Transportation Railroad, Inc., Decision

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision accepting application for consideration.

SUMMARY: The Commission accepts for consideration the application filed December 13, 1991, by CSX Corporation (CSX) CSX Transportation, Inc. (CSXT), The Carrollton Railroad (Carrollton), and Transkentucky Transportation Railroad, Inc. (TTR) (collectively applicants). Carrollton, a subsidiary of CSXT, which in turn is a subsidiary of CSX seeks to acquire all of the stock of TTR, a Class III railroad which owns and operates a 49.6-mile rail line between Paris and Maysville, KY. The Commission finds this a minor transaction under 49 CFR part 1180.

DATES: Written comments must be filed with the Interstate Commerce Commission no later than February 13, 1992, and concurrently served on applicants' representatives, the United States Secretary of Transportation, and the Attorney General of the United States. Comments from the Secretary of Transportation and the Attorney General must be filed by February 28, 1992. The Commission will issue a service list shortly thereafter. Comments must be served on all parties of record within 10 days of the Commission's issuance of a service list and confirmed by certificate of service filed with the Commission indicating that all designated individuals and organizations on the service list have been properly served. Applicant's reply is due by March 16, 1992.

ADDRESSES: Send original and 10 copies of all documents to:

Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 31991, Interstate Commerce Commission, Washington, DC 20423.

In addition, concurrently send one copy of all documents to the United States Secretary of Transportation, the Attorney General of the United States, and to applicant's representatives:

Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Room 8201, 400 Seventh St., SW., Washington, DC 20590.

Attorney General of the United States, United States Department of Justice, 10th & Constitution Ave., NW., Washington, DC 20530.

G. Paul Moates, Sidley & Austin, 1722 Eye Street, NW., Washington, DC 20006.

Charles C. Rettberg, Jr., CSX Transportation, Inc. 500 Water Street, Jacksonville, FL 32202.

Fred R. Birkholz, CSX Transportation, Inc., 100 N. Charles St., Baltimore, MD 21201.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 927-5660 [TDD for hearing impaired: (202) 927-5721].

SUPPLEMENTARY INFORMATION: Applicants seek Commission approval under 49 U.S.C. 11343, *et seq.*, for Carrollton to purchase all of TTR's issued and outstanding stock for $3 million. Applicants have submitted an application in accordance with the railroad consolidation procedures, 49 CFR Part 1180, and they contend that this is a minor transaction under section 1180.2(c).

TTR, a Class III carrier, owns and operates a 49.6-mile short haul railroad originating at the CSXT point of interchange in Paris, KY, and terminating at Maysville, KY. Virtually all of TTR's traffic consists of eastern Kentucky coal originating on the CSXT system and moving via the Paris interchange for delivery by TTR to the Maysville coal barge transloading facility operated by Transcontinental Terminals Inc. (TCT), a former affiliate of TTR. The coal travels by barge and is ultimately used by utilities and industrial end-users along the Ohio River. TTR is a wholly-owned subsidiary of TTI Systems Inc. (TTI) which is a wholly-owned subsidiary of Transco Coal Company (TTC) which is a wholly-owned subsidiary of Transco Energy Company (Transco).

CSX is a non-carrier holding company that owns and controls several carriers subject to Commission regulation: CSXT, American Commercial Barge Line Company (an inland barge carrier), CSX Intermodal, Inc. (a motor carrier), and various wholly-owned carrier affiliates. CSXT is a Class I common carrier conducting operations over 19,000 miles in 20 states, the District of Columbia, and the Province of Ontario, Canada. Carrollton, a subsidiary of CSXT, owns and operates an 18-mile line of railroad between Worthville and Carrollton, KY. It connects the CSXT main line in northeastern Kentucky with a barge terminal on the Ohio River.

Applicants contend that the proposed purchase of TTR will strengthen the already close relationship between the two carriers, enable joint marketing of services, and assure shippers continued and uninterupted service, an especially important objective in view of Transco's decision to sell TTR. TTR s entry into the CSXT corporate family assertedly will result in enhanced service and lead to greater operational efficiency and cost savings with respect to certain administrative services and possibly equipment maintenance and repair facilities.

Applicants contend that numerous transportation alternatives exist in the Appalachian coal-producing region. They assert that the transaction will not substantially reduce competition for the transportation of Appalachian coal to the inland river system because CSXT and TTR are already partners in handling all of the involved Maysville coal traffic. Similarly, because CSXT is the originating carrier for every ton of coal carried by TTR, the proposed transaction allegedly will not increase CSXT's share of coal traffic or enable a combined CSXT-TTR to abuse market power by raising rates above competitive levels or reducing services to shippers and receivers of river coal. Additionally, they note that intensive source and transportation competition will continue to restrain rates, and that shippers in any event, are protected in many instances by long-term rail transportation contracts.

Upon consummation of the proposed transaction,[1] TTR will be operated as a separate Carrollton subsidiary under the common control of CSXT. CSXT intends to operate TTR in essentially the same manner as it currently functions, with no significant change in operations or service levels.

TTR and CSXT employees will retain their existing positions and responsibilities; no workforce reductions or job consolidation are expected to result from consummation of the proposed transaction. Any authority granted will be subject to the conditions set forth in *New York Dock Ry — Control—Brooklyn Eastern Dist.* 360 I C.C. 60 (1979), as clarified in *Wilmington Term. RR, Inc.—Pur. & Lease—CSX Transp., Inc.* 6 I.C.C.2d 799 (1990), *aff'd sub nom. Railway Labor Executives' Ass'n v. ICC,* 930 F.2d 511 (6th Cir 1991).

[1] Pursuant to an agreement dated December 1, 1991, TTR's stock is being held in a voting trust. Following final Commission approval, the voting trust will be dissolved, and TTR stock will be transferred to Carrollton.

Under our consolidation regulations, we must determine initially whether a proposed transaction is major, significant, or minor. The proposed transaction, involving a Class I and a Class III railroad, has no regional or national significance and will not result in a major market extension. Accordingly, we find the proposal to be a minor transaction under section 1180.2(c). Because the application substantially complies with the applicable regulations governing minor transactions, we are accepting it for consideration.

The application and exhibits are available for inspection in the Public Docket Room at the Office of the Interstate Commerce Commission in Washington, DC. In addition, they may be obtained upon request from applicants' representatives named above.

Any interested person or government entity, may participate in this proceeding by submitting written comments. Any person or entity who files timely written comments shall be considered a party of record if the comments so request. In this event, no petition for leave to intervene need be filed.

Consistent with 49 CFR 1180.4(d)(1)(iii), written comments must contain:

(a) The docket number and title of the proceeding;

(b) The name, address, and telephone number of the commenting party and its representative upon whom service shall be made;

(c) The commenting party's position, *i.e.* whether it supports or opposes the proposed transaction;

(d) A statement of whether the commenting party intends to participate formally in the proceeding or merely comment on the proposal;

(e) If desired, a request for an oral hearing with reasons supporting this request; the request must indicate the disputed material facts that can only be resolved at a hearing; and

(f) A list of all information sought to be discovered from applicant carriers.

Because we have determined that this proposal is a minor transaction, no responsive applications will be permitted. The time limits for processing minor transactions are set forth at 49 U.S.C. 11345(d).

Discovery may begin immediately. We admonish the parties to resolve all discovery matters expeditiously and amicably.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This application is accepted for consideration as a minor transaction under 49 CFR 1180.2(c).

2. The parties shall comply with all provisions stated above.

3. This decision is effective January 14, 1992.

Decided: January 6, 1992.

By the Commission, Chairman Philbin, Vice Chairman McDonald, Commissioners Simmons, Phillips, and Emmett.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 92-961 Filed 1-13-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether section 3504(h) of Public Law 96-511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Ms. Lin Liu on (202) 395-7340 and to the Department of Justice s Clearance Officer, Mr. Lewis Arnold, on (202) 514-4305. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible.

Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Lewis Arnold, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

(1) Law Enforcement Officers Killed or Assaulted.
(2) DO–71, Federal Bureau of Investigation.
(3) Annually.
(4) State or local governments. Instant Form DO–71 is used to facilitate the collection of data in compliance with a Presidential Directive, issued on 6–3–71, mandating the collection and publication of data relating to law enforcement officers killed or assaulted.
(5) 71,794 annual responses at .15 hours per response.
(6) 10,769 annual burden hours.
(7) Not applicable under 3504(h).

Revision of a Currently Approved Collection

(1) Analysis of Law Enforcement Officers Assaulted or Killed.
(2) DO–76, Federal Bureau of Investigation.
(3) Annually.
(4) State or local governments. Revised instant Form DO–76 is used to facilitate the collection of data in compliance with a Presidential Directive, issued 6–3–71, mandating the collection and publication of data relating to analysis of law enforcement officers assaulted or killed.
(5) 132 annual responses at .5 hours per response.
(6) 66 annual burden hours.
(7) Not applicable under 3504(h).
Public comment on these items is encouraged.

Dated: January 8, 1992.

Lewis Arnold,

Department Clearance Officer, Department of Justice.

[FR Doc. 92–879 Filed 1–13–92; 8:45 am]

BILLING CODE 4410–02–M

Lodging of Consent Decree Pursuant to Resource Conservation and Recovery Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on January 6, 1992, a proposed Consent Decree in *United States* v. *Com-Pak Engineering, Inc. and Eugene Evans*, Civil Action No. 86–3251, was lodged with the United States District Court for the Central District of Illinois. The United States' First Amended Complaint in this case alleged violations of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901 *et seq.*, from defendants' operation of the Brighton Landfill, in Brighton, Illinois. The complaint alleged violations of an EPA Consent Agreement and Final Order entered into on September 10, 1985, relating to groundwater monitoring at the Brighton Landfill, and also of RCRA regulations relating to groundwater monitoring, closure/post-closure plans, and financial responsibility requirements.

The proposed Consent Decree requires that defendants take specified actions regarding groundwater monitoring, closure/post-closure plans, and financial responsibility requirements. The proposed Decree also provides that defendants will pay the United States a civil penalty of $60,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Com-Pak Engineering, Inc., et al.*, DOJ Ref. No. 90–7–1–341.

The proposed Consent Decree may be examined at the Offices of the United States Attorney for the Central District of Illinois, room 312, 600 East Monroe Street, Springfield, Ill. 62701, at the Office of Regional Counsel, United States Environmental Protection Agency, Region V, 111 West Jackson Street, Chicago, Illinois 60604, and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004, (202) 347–2072. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy, please enclose a check in the amount of $9.00 (25 cents per page reproduction costs) payable to "Consent Decree Library."

Roger B. Clegg,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 92–820 Filed 1–13–92; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to Clean Water Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on December 18, 1991 a proposed Consent Decree in *United States* v. *Dana Corporation*, was lodged in the United States District Court for the Southern District of Indiana. The Complaint filed by the United States alleged violations of the Clean Water Act, and the terms and conditions of Defendant's National Pollution Discharge Elimination System ("NPDES") permit. The Consent Decree requires the defendant to pay a civil penalty of $750,000 in full settlement of the claims set forth in a complaint filed by the United States.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Dana Corporation*, D.J. Ref. No. 90–5–1–1–3667.

The proposed Consent Decree may be examined at any of the following offices: (1) The United States Attorney for the Southern District of Indiana, U.S. Courthouse, Fifth Floor, 46 East Ohio Street, Indianapolis, Indiana 46204 (contact Assistant United States Attorney Thomas Kieper); (2) the U.S. Environmental Protection Agency, Region 5, 230 South Dearborn Street, Chicago, Illinois 60604 (contact Assistant Regional Counsel Andre Daugavietis); and (3) the Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice, room 1541, 10th and Pennsylvania Avenue, NW., Washington, DC. Copies of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, Box 1097, 601 Pennsylvania Avenue, NW., Washington, DC 20004, telephone (202) 347–7829. For a copy of the Consent Decree please enclose a check in the amount of $2.00 (25 cents per page reproduction charge) payable to Consent Decree Library.

Barry M. Hartman,

Acting Assistant Attorney General, Environment & Natural Resources Division.

[FR Doc. 92–821 Filed 1–13–92; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Final Judgment by Consent Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and section 122 (d) and (i) of CERCLA , 42 U.S.C. 9622 (d) and (i), notice is hereby given that on January 3, 1992 a consent decree in *United States* v. *Kowinsky Farms, Inc. et at.*, Civil Action No. 92–4, was lodged with the United States District Court for the District of Delaware.

The complaint filed by the United States at the time of lodging the consent decree alleges, under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, that the defendants Kowinsky Farms, Inc. and Alberta F. Schmidt (the "Owner Settlors"), and McCrory Parent Corporation, Nabisco Brands, Inc., Rapid-American Corporation, and Reichhold Chemicals, Inc. (the "Non-Owner Settlors"), are liable for an injunction and response costs incurred by the United States in response to the release or threat of release of hazardous substances at the Coker's Sanitation Service Landfills Superfund Site, in Kent County, Delaware (the "Site"). The complaint further states that defendant Kowinsky Farms, Inc. is a past and present owner of the Site; defendant Alberta F. Schmidt is a present owner of the Site; and defendants McCrory Parent Corporation, Nabisco Brands, Inc., Rapid-American Corporation, and Reichhold Chemicals, Inc. all arranged for disposal of hazardous substances at the Site.

In the complaint, the United States, on behalf of the Environmental Protection Agency, requests a judgment against the defendants jointly and severally for implementation of the remedy selected in EPA's Record of Decision ("ROD") dated September 28, 1990, which provides for the placement of deed restrictions on each landfill property to limit the future use of the property; enclosing the disposal area of the landfills with fencing; placement of warning signs on the fencing; placement of cover material along the northern slope of Landfill #1 to eliminate exposure to leachate seeps; backfilling to grade and seeding areas of Landfill #2 which have subsided due to uneven settling of waste; sealing leachate collection wells at Landfill #2; semi-annual sampling of groundwater at both landfills; semi-annual inspection of both landfills; semi-annual surface water monitoring at the Willis Branch of the Leipsic River for a period of no less than five years; review of the remedial action, including site inspection reports and groundwater and surface water data, no less than every five years after initiation of the remedial action; reimbursement of approximately $1,240,000 in past response costs under section 107(a) of CERCLA, 42 U.S.C. 9607(a); and a determination under section 113(g)(2) of CERCLA, 42 U.S.C. 9613(g)(2), that any finding of liability would be binding in any subsequent action for further response costs or damages.

In the consent decree, the Non-Owner Settlors have agreed, *inter alia*, to implemement the remedy selected in the ROD; to undertake monitoring work for surface water and sediments at the Site; to pay $80,000 to the Department of the Interior and the Department of Commerce National Oceanic and Atmospheric Administration, as the federal trustees, in lieu of restoring approximately 2–3 acres of wetlands that will be damaged by the implementation of the ROD; to pay $1,240,000 in past costs to the Hazardous Substances Trust Fund; and to reimburse the United States for any future costs related to the Site. The Owner Settlors have agreed to put restrictive notices on the property deeds and to grant access to the Site. The Non–Owner Settlors have also agreed to review, periodically, the remedial action to ensure that human health and the environment are being protected by the remedial action being implemented. The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Kowinsky Farms, Inc. et al.*, DOJ Ref. No. 90–11–2–658. The proposed consent decree may be examined at the office of the United States Attorney, 5110 J. Caleb Boggs Federal Building, 844 King Street, Wilmington, Delaware 19801. Copies of the consent decree may also be examined and obtained by mail at the Environmental Enforcement Section Document Center, 601 Pennsylvania Ave., NW., Box 1097, Washington, DC 20004 (202–347–2072). When requesting a copy of the consent decree by mail, please enclose a check in the amount of $46.50 (twenty-five cents per page reproduction costs) payable to the "Consent Decree Library."

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 92–819 Filed 1–13–92; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research Act of 1984; Automotive Emissions Cooperative Research Program

Notice is hereby given that, on November 27, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), the Automotive Emissions Cooperative Research Venture (known as the Auto/Oil Air Quality Improvement Research Program ("the Program")) filed written notifications simultaneously with the Attorney General and with the Federal Trade Commission disclosing in additional detail the activities planned for the second phase of the Program ("Phase II"). The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Phase II will continue to have as its objectives the generation of data, *inter alia*, through vehicle testing and air quality and other modeling, designed to evaluate the postential improvements in air quality acheiveable through the use of reformulated gasolines, of methanol and other alternative fuels, and of developments in advanced automotive technology including emissions control systems. Although the specifics of some of the work involved in Phase II have not yet been determined and will continue to evolve as more is learned from Phase I and early Phase II work, it is expected that Phase II of the Program will: (1) Apply knowledge gained from Phase I of the Program to generate additional data regarding improvements in air quality attributable to reformulated gasolines (including oxygenated fuels) and gasoline/methanol blends, possibly including advanced blends using reformulated gasolines; (2) generate data regarding improvements in air quality attributable to reformulated gasolines in future vehicles equipped with more advanced automotive technology and emission control systems; (3) using improved techniques for measuring speciated engine-out emissions, perform research and testing to develop data on the effects of reformulated gasolines and other fuels on emissions, and on the generic effects of emission control catalysts on emissions and air quality; (4) generate data regarding improvements in air quality attributable to methanol, compressed natural gas,

liquid propane gas, and possibly other alternative fuels, used in vehicles dedicated to those fuels; (5) generate data regarding possible "real-world" factors contributing to vehicle emissions that might not be adequately accounted for in traditional research and testing; (6) use improved measurement techniques to generate data regarding the effects of reformulated gasolines and other alternative fuels on air toxic emissions; and (7) generate data regarding emissions from individual vehicles having unusually high levels of emissions, known as "high-emitters." Phase II may also, possibly, generate data regarding the durability of emissions effects of reformulated gasolines and gasoline/methanol blends over the life of automobiles driven on those fuels. In addition to the above experimental activities, the Program envisages the use of air modeling and, possibly, cost-benefit studies to help establish the relative effectiveness of various alternatives for improving air quality.

The Program continues to expect the research and testing performed in Phase II to provide data with which the federal government, as well as various state governments, can compare the costs and benefits of the various alternatives for reducing emissions in order to improve air quality. The Program anticipates that the data from Phase II research and testing will be made available to Congress, the Environmental Protection Agency, other federal agencies, various state regulators, and the public.

No other changes have been made in either the membership or planned activities of the Auto/Oil Air Quality Improvement Research Program.

On October 16, 1989, the Auto/Oil Air Quality Improvement Research Program filed its original notification pursuant to section 6(a) of the Act. The Department of Justice ("the Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on November 29, 1989, 54 FR 49122. On June 28, 1990, and May 17, 1991, the Auto/Oil Air Quality Improvement Research Program filed additional notifications. The Department published notices in the **Federal Register** in response to these additional notifications on August 8, 1990 (55 FR 32321), and June 14, 1991 (56 FR 27539).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-818 Filed 1-13-92; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—Halon Alternatives Research Corporation, Inc. (HARC)

Notice is hereby given that, on December 3, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Halon Alternatives Research Corporation, Inc. ("HARC") filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing the addition of new members to HARC. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

The new members to HARC are: AT&T, Basking Ridge, NJ; Dresser Industries, Berea, KY; Edison Electric Institute, Washington, DC; Hughes Aircraft, Goleta, CA, Jeng Dah Extinguisher Company, Ltd., Taipei, Taiwan, ROC; Northern Telecom, Ltd., Mississauga, Ontario, Canada; Pacific Scientific, Duarte, CA; Phillips Petroleum, Bartlesville, OK; Shell Internationale Petroleum Mij. B.V., The Netherlands; and 3M Company, St. Paul, MN.

No other changes have been made in either the membership or the purpose of HARC.

On February 7, 1990, HARC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 7, 1990, 55 FR 8204. On January 22, 1991, HARC filed a notice of additional members to the project. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 14, 1991, 56 FR 6035.

Membership in this group research project remains open, and the parties intend to file additional written notification disclosing all changes in membership of HARC.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-816 Filed 1-13-92; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—Chemical Injection Distribution Systems for Sub-Sea Production Systems

Notice is herby given that, on December 3, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301, *et seq.* ("the Act"), Southwest Research Institute ("SwRI") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission of a project entitled "Chemical Injection Distribution Systems for Sub-Sea Production Systems". The notification discloses (1) the identities of the parties to the project and (2) the nature and objective of the project. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the project and its general areas of planned activities are given below.

The parties to the project are:

Amoco Production Company, Houston, Texas 77253

BP Exploration, Houston, Texas 77056

Shell Offshore, Inc., New Orleans, Louisiana 70160

The purpose of the project is to define more cost-effective approaches for distributing treatment chemicals to clusters of sub-sea wells from a Surface Support Facility located up to 20 miles from the production location. The major tasks for the project are (1) identify a broad range of approaches and qualitatively evaluate each; (2) perform a quantitative analysis of preliminary concepts; (3) define criteria and jointly select the best choice; and (4) perform the final analysis of the conceptual design to accomplish the overall purpose of the project.

Membership in this group research project remains open, and the parties intend to file additional written notification disclosing all changes in membership of this project. Information regarding participation in this project may be obtained from the Southwest Research Institute, 6220 Culebra Road, San Antonio, Texas 78208.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-815 Filed 1-13-92; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research Act of 1984—"Feasibility Study on Using Molecular Sieves for Diesel NOx Control"

Notice is hereby given that, on November 25, 1991, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), Southwest Research Institute ("SwRI") filed a written

notification simultaneously with the Attorney General and the Federal Trade Commission dislosing the addition of a party to its project entitled "Feasibility Study on Using Molecular Sieves for Diesel NOx Control." The notification was filed for the purpose of invoking the Act's provision limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, SwRI advised that AC Rochester Division, General Motors Corporation, Flint, MI, has (effective September 27, 1991) become a party to the project.

No other changes have been made in either the membership or planned activity of the group research project.

On July 1, 1991 SwRI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice ("The Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 29, 1991, 56 FR 35877. On September 19, 1991, SwRI filed an additional written notification. The Department published a notice in the **Federal Register** in response to the additional notification on November 5, 1991, 56 FR 56528.

Additionally, a correction notice to the November 5, 1991 notice was published on December 17, 1991, 56 FR 65541.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 92-817 Filed 1-13-92; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Registration

By Notice dated September 30, 1991, and published in the **Federal Register** on October 11, 1991, (56 FR 51403), Abbott Laboratories, 14th Street and Sheridan Road, Attn: Customer Service D-345, North Chicago, Illinois 60064, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drugs	Schedule
Dextrapropoxyphene, bulk (non-dosage forms) (9273).	II
Fentanyl (9801)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: December 30, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92-834 Filed 1-13-92; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration

By Notice dated October 8, 1991, and published in the **Federal Register** on October 17, 1991, (56 FR 52075), CIBA-GEIGY Corporation, Pharmaceuticals Division, Regulatory Compliance SEF 1030, 556 Morris Avenue, Summit, New Jersey 07901, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of methylphenidate (1724), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of a basic class of controlled substance listed above is granted.

Dated: December 30, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92-832 Filed 1-13-92; 8:45 am]

BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Registration

By Notice dated October 31, 1991, and published in the **Federal Register** on November 12, 1991, (56 FR 57533), Eli Lilly Industries, Inc., Chemical Plant, Kilometer 146.7, State Road 2, Mayaguez, Puerto Rico 00708, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of dextropropoxyphene, bulk (non-dosage forms) (9273), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of a basic class of controlled substance listed above is granted.

Dated: December 30, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92-830 Filed 1-13-92; 8:45 am]

BILLING CODE 4410-09-M

Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedules I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with §1311.42 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on September 11, 1991, Lab, Inc., 700 Grand Avenue, Ridgefield, New Jersey 07657, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Amphetamine (1100)	II
Methamphetamine (1105)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Morphine (9300)	II
Oxymorphone (9652)	II
Fentanyl (9801)	II

Any manufacturers holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United

States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than February 14, 1992.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedules I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e) and (f) are satisfied.

Dated: December 30, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92–838 Filed 1–13–92; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on September 19, 1991, Norac Company Inc., 405 S. Motor Avenue, Azusa, California 91702, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Ibogaine (7260)	I
Tetrahydrocannabinols (7370)	I

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (30 days from publication).

Dated: December 30, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92–840 Filed 1–13–92; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances; Registration

By Notice Dated November 4, 1991, and published in the **Federal Register** on November 12, 1991, (56 FR 57533), North Pacific Trading Company, 1505 S.E. Gideon Street, Portland, Oregon 97202, made application to the Drug Enforcement Administration to be registered as an importer of marihuana (7360), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21, Code of Federal Regulations 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: December 30, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92–836 Filed 1–13–92; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Registration

By Notice dated October 31,1991, and published in the **Federal Register** on November 6, 1991, (56 FR 56665), Sanofi Winthrop L.P., DBA Sterling Organics, 33 Riverside Avenue, Rensselaer, New York 12144, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of meperidine (9230), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations, § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of a basic class of controlled substance listed above is granted.

Dated: December 30, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92–833 Filed 1–13–92; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances; Registration

By Notice Dated October 30, 1991, and published in the **Federal Register** on November 6, 1991 (56 FR 56665), Stanford Seed Company, 340 South Muddy Creek Road, Denver, Pennsylvania 17517, made application to the Drug Enforcement Administration to be registered as an importer of marijuana (7360), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21, Code of Federal Regulations 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: December 30, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92–835 Filed 1–13–92; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on October 24, 1991, Toxi-Lab, Inc., 2 Goodyear, Irvine, California 92718, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Phencyclidine (7471)	II
1-Piperidinocyclohexanecarbonitrile (8603).	II
Benzoylecgonine (9180)	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21

CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than February 13, 1992.

Dated: December 30, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92-839 Filed 1-13-92; 8:45 am]

BILLING CODE 4410-09-M

Importation of Controlled Substances; Registration

By Notice dated October 8, 1991, and published in the **Federal Register** on October 17, 1991 (56 FR 52075), Wildlife Laboratories, Inc., 1401 Duff Drive, suite 600, Fort Collins, Coloardo 80524, made application to the Drug Enforcement Administration to be registered as an importer of carfentanil (9743), a basic class of controlled substance listed in Schedule II.

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21 Code of Federal Regulations, § 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: December 30, 1991.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92-837 Filed 1-13-92; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL COMMISSION ON SEVERELY DISTRESSED PUBLIC HOUSING

Meetings/Public Hearings Announcement

AGENCY: National Commission on Severely Distressed Public Housing.

ACTION: Notice of meeting.

SUMMARY: In according with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Commission on Severely Distressed Public Housing announces a forthcoming meeting of the Commission.

DATES: January 31, 1992, 10 a.m.-4 p.m.

ADDRESSES: Grand Hyatt Washington, 1000 H Street, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Carmelita Pratt, Administrative Officer, The National Commission on Severely Distressed Public Housing, 1100 L Street, NW., #7121, Washington, DC 20005, (202) 275-6933.

TYPE OF MEETING: Open.

Carmelita R. Pratt,

Administrative Officer.

[FR Doc. 92-911 Filed 1-13-92; 8:45 am]

BILLING CODE 6820-07-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Process for Reconsideration of Declined General Applications for Federal Assistance

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: Process for reconsideration of declined general applications for federal assistance.

FOR FURTHER INFORMATION CONTACT: Jane Smith, Assistant General Counsel ((202) 682-5762), National Endowment for the Arts, 1100 Pennsylvania Ave., NW., room 522, Washington, DC 20506.

1. Purpose

The National Endowment for the Arts relies on peer panel review of grant applications as the first step in assuring informed funding. Panel recommendations are subsequently reviewed by the National Council on the Arts, which provides advice to the Chairperson. The Chairperson then decides whether to fund the applications recommended by the Council.

The Circular establishes a procedure for reconsideration of applications for financial and technical assistance, which have been declined by the National Endowment for the Arts based on negative recommendations of the peer review panel. The Endowment will not reconsider the amount of any grant awarded. This Process does not apply to applications recommended by the peer review panel but rejected by the Council or Chairperson. Reconsideration of such applications is had at the discretion of the Chairperson only. The provisions of this Circular, which updates and amends the earlier (1983) Circular on this subject, do not apply to procurement governed by the Federal Acquisition Regulations.

2. Policy

(a) *Statement.* Award of financial and technical assistance is discretionary. Panel determinations are made using criteria described in the program guidelines; several criteria involve subjective, qualitative judgments which are not subject to reconsideration. Notwithstanding this fact, a Project Director, Authorizing Official, or individual whose application has been declined may obtain an explanation of the declination from the appropriate Program Director. Following receipt of the explanation, if the Project Director, Authorizing Official, or individual applicant (hereafter referred to as "applicant") believes that the declination was based on one or more of the following Grounds for Reconsideration, reconsideration may be obtained under the procedure outlined in Section 3, below.

(b) *Ground(s) for Reconsideration.* Reconsideration of grant declinations is available solely for one of the following three reasons relating to procedural impropriety or error:

(i) Application declined based on Review Criteria other than those appearing in the relevant guidelines;

(ii) application declined based on influence of individual(s) with conflict of interest on peer review panel;

(iii) application declined based on information provided by staff, panelists, or others, but not including the applicant, that was materially inaccurate or incomplete at the time of review *despite* the fact that the applicant had provided the Endowment staff with accurate and complete information as part of the regular application process.

3. Procedures to be Followed for Reconsideration

(a) *Explanation by Program Director.* Within 30 days following written notification from the Endowment of its decision on any application, the applicant may request an explanation for a declined application from the appropriate Program Director. This initial request may be by telephone, in person, or in writing. The Program Director will explain within 30 days the basis for declination. Upon request from the applicant, the Program Director shall provide the substance of the peer review panel comments, the names of all panel and staff members, and the name of the appropriate Deputy Chairperson (hereafter "Deputy") who will review the applicant's Request for Reconsideration.

(b) *Request for Reconsideration.* If the Program Director's explanation, or other reliable information, appears to the applicant to indicate the presence of one or more of the "Grounds for Reconsideration" listed in Paragraph 2(b) above, the applicant may submit to the Deputy a written Request for Reconsideration. This written request must reference a particular ground(s) for reconsideration and specify the facts supporting his or her claim, with enough particularity to enable the Deputy to determine whether the claim is meritorious. A request of this nature will be considered only if (a) the Request for Reconsideration is based on one or more of the grounds listed in Paragraph 2(b); (b) the applicant has obtained an explanation from the appropriate Program Director; (c) the applicant has specified with sufficient particularity the facts supporting his or her claim; (d) the Request for Reconsideration is received by the Deputy within 45 days after the applicant received the Program Director's explanation.

(c) *Action by the Appropriate Deputy.*

(i) The appropriate Deputy will review the applicant's Request for Reconsideration, records of the panel discussions, the applicant's application file, and any other relevant materials to determine if the panel's recommendation was influenced by one or more of the grounds listed in Paragraph 2(b). In conducting this review, the Deputy may request additional information from the applicant and may obtain additional peer review. In addition, the Deputy may request an audit, financial survey, or site visit of the applicant, but no revisions or additions to the grant application materials will be accepted in connection with the Request for Reconsideration.

(ii) The Deputy may conduct the reconsideration personally or may designate another Endowment official who had no part in the initial evaluation to do so. The term "Deputy," as used here, applies to such designees.

(iii) The Deputy will provide written notification of the results of the reconsideration within 45 days. If the Deputy cannot provide such notice within 45 days, the applicant will receive a written explanation of the need for more time and an estimate of when the results can be expected.

(iv) If the Deputy determines that none of the grounds listed in Paragraph 2(b) existed, the declination will be affirmed.

(vi) If the Deputy determines that one or more of the grounds listed in Paragraph 2(b) existed, but the recommendation of the peer review panel was not affected, the declination will be affirmed.

(vii) If the Deputy determines that one or more of the grounds listed in Paragraph 2(b) existed, and he or she can determine, based on the materials reviewed, that but for the infirmity in the peer review process, the application would have been recommended, the application will be considered by the National Council on the Arts at its next regularly scheduled meeting.

(viii) If the Deputy determines that one or more of the grounds listed in Paragraph 2(b) occurred, but he or she cannot determine whether but for the infirmity, the peer review panel would have recommended the application, the application will be reviewed by a new panel. If the new panel recommends the application, the National Council on the Arts will review it at the next regularly scheduled meeting.

(ix) The Deputy's determination shall be final.

4. Reporting Requirements

Each appropriate Deputy will maintain a record of Requests for Reconsideration. The record will include the date of receipt, the name of the applicant, including name of organization or institution where applicable, the application number, and once the Deputy's review is complete, the date on which each applicant was notified of the results of the reconsideration, and what those results were.

Dated: January 8, 1992.

Amy Sabrin,

General Counsel, National Endowment for the Arts.

[FR Doc. 92-807 Filed 1-13-92; 8:45 am]

BILLING CODE 7535-01-M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Instructional Materials Development; Notice of Meeting

The National Science Foundation announces the following meeting:

Name: Advisory Panel for Instructional Materials Development.

Date and Time: January 24-25, 1992, from 8:30 a.m. to 5:30 p.m.

Place: ANA Hotel, 2401 M Street, NW., Washington, DC 20037.

Type of Meeting: Closed Meeting.

Contact Person: Alice J. Moses, Gerhard Salinger, Frank Sutman, Margaret Cozzens, and Donald Humphreys, National Science Foundation, 1800 G St., NW., Washington, DC 20550, Instructional Materials Development, room 635-A, Phone (202) 357-7066.

Purpose of Meeting: To attend Instructional Materials Development Panel and provide advice and recommendations concerning K-12 Mathematics, Science and Technology Education, and Assessment of Student Learning.

Agenda: To review and evaluate Instructional Materials Development proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a propriety confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Dated: January 8, 1992.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 92-808 Filed 1-13-92; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Document Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the Office of Management and Budget (OMB) review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for collection of information under the provisions of the Paperwork Reduction Act, 1980 (44 U.S.C. chapter 35).

1. Type of submission, new, revision or extension: Revision.

2. The title of the information collection: 10 CFR part 26, Fitness-for-Duty Programs.

3. The form number, if applicable: Not applicable.

4. How often the collection is required: Biannual.

5. Who will be required to report: All nuclear power plant licensees. Additional information, such as the number of actions taken, would be required to be reported by those licensees who choose to implement the option provided by this amendment.

6. An estimate of the number of responses anticipated annually: 198 responses.

7. Annual burden per response: 11.2 additional hours per semiannual report; 0.1 per notification to individual.

8. An estimate of the total number of hours needed annually by the industry to complete the requirement: 3717 hours plus a one-time development burden of 128 hours.

9. An indication of whether section 3504(h), Public Law 96–511 applies: Applicable.

10. Abstract: 10 CFR part 26 of NRC's regulations, "Fitness-for-Duty Programs" requires operators of nuclear power plants to implement fitness-for-duty programs to assure that personnel are not under the influence of any substance or mentally or physically impaired, to retain certain records associated with the management of these programs, and to provide reports concerning the performance of the programs and certain significant events. The final revision to the rule permits individuals to be temporarily suspended as a result of a preliminary positive test result for cocaine or marijuana not confirmed by the Medical Review Officer and requires the deletion of specified records when tests results are not confirmed. The revision requires additional data elements to be included in a biannual report to assure that data on the number of occasions that this rule provision is exercised, and that the management actions, including appeals, are reported to the Commission as well as information which will allow the Commission to monitor confirmation rates from onsite and U.S. Department of Health and Human Services-certified laboratory screening processes and to evaluate the accuracy and reliability achievable through initial screening tests.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., Lower Level, Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer: Ronald Minsk, Office of Information and Regulatory Affairs (3150–0146), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda J. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 31st day of December 1991.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 92–927 Filed 1–13–92; 8:45 am]

BILLING CODE 7590–01–M

Air Sampling in the Workplace; Availability

The Nuclear Regulatory Commission has published for comment a report on "Air Sampling in the Workplace," (NUREG–1400). This report contains technical information on air sampling in the workplace that might be useful to licensees. The report was written in support of a Regulatory Guide on air sampling that is being developed; the availability of a draft of the Regulatory Guide, "Air Sampling in the Workplace," DG-8003, was announced in the **Federal Register** on October 17, 1991 (56 FR 52087).

The comment period on NUREG–1400 expires March 16, 1992. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure comments consideration for comments received on or before this date. Comments should be sent to: Chief, Regulatory Publications Branch, P–223, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

A free single copy of draft NUREG–1400 may be requested by those considering public comment by writing to the U.S. Nuclear Regulatory Commission, Attn: Distribution and Mail Services Section, Mail Stop P–370, Washington, DC 20555. A copy is also available for inspection and/or copying in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Dated at Rockville, Maryland, this 7th day of January, 1992.

For the Nuclear Regulatory Commission.

Donald A. Cool,

Chief, Radiation Protection and Health Effects Branch, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 92–929 Filed 1–13–92; 8:45 am]

BILLING CODE 7590–01–M

Deposition: Software To Calculate Particle Penetration Through Aerosol Transport Lines; Availability

The Nuclear Regulatory Commission has published for comment a report on "Deposition: Software to Calculate Particle Penetration through Aerosol Transport Lines," (NUREG/GR–0006). This report describes software developed for NRC under the direction of Dr. N.K. Anand and Dr. Andrew R. McFarland at Texas A&M University. The NRC is considering an endorsement of the software in a Regulatory Guide on air sampling that is being developed; the availability of a draft of the Regulatory Guide, "Air Sampling in the Workplace," DG–8003, was announced in the **Federal Register** on October 17, 1991 (56FR52087).

The comment period on NUREG/GR–0006 expires March 16, 1992. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure comments consideration for comments received on or before this date. Comments should be sent to: Chief, Regulatory Publications Branch, P–223, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

A free single copy of draft NUREG/GR–0006 may be requested by those considering public comment by writing to the U.S. Nuclear Regulatory Commission, Attn: Distribution and Mail Services Section, Mail Stop P–370, Washington, DC 20555. A copy is also available for inspection and/or copying in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Dated at Rockville, Maryland, this 7th day of January, 1992.

For the Nuclear Regulatory Commission.

Donald A. Cool,

Chief, Radiation Protection and Health Effects Branch, Division of Regulatory Applications, Office of Nuclear Regulatory Research.

[FR Doc. 92–928 Filed 1–13–92; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–213]

Connecticut Yankee Atomic Power Co.; Notice of Partial Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Connecticut Yankee Atomic Power Company (the licensee) to withdraw a portion of its April 8, 1991 application for proposed amendment to Facility Operating License DPR–61 for the Haddam Neck Plant, located in Middlesex County, Connecticut.

The portion of the amendment being withdrawn would have revised the facility Technical Specifications sections 3/4.9.4, Containment Building Penetrations and 3/4.9.8, Residual Heat Removal and Coolant Recirculation, which will be resubmitted at a later date.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on July 24, 1991 (56 FR 33952). However, by letter dated December 12, 1991, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated April 8, 1991, and the licensee's letter dated December 12, which withdrew a portion of the application for license amendment. The above documents are available for

public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Dated at Rockville, Maryland, this 7th day of January 1992.

For the Nuclear Regulatory Commission.

Alan B. Wang,

Project Manager, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 92–930 Filed 1–13–92; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–18469; 812–7785]

Capstead Securities Corporation IV; Notice of Application

January 7, 1992.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "Act").

APPLICANT: Capstead Securities Corporation IV.

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from all provisions of the Act.

SUMMARY OF APPLICATION: Applicant seeks a conditional order exempting it from all provisions of the Act in connection with applicant's proposed issuance and sale of one or more series of collateralized mortgage obligations and residual interests relating thereto, and applicant's proposed election to treat any such series as a real estate mortgage investment conduit ("REMIC") under the Internal Revenue Code of 1986.

FILING DATES: The application was filed on September 9, 1991, and amended on October 29, 1991, and on December 23, 1991.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 3, 1992, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 2001 Bryan Tower, suite 3600, Dallas, Texas 75201.

FOR FURTHER INFORMATION CONTACT: Elizabeth G. Osterman, Staff Attorney, at (202) 504–2524 or Barry D. Miller, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a Delaware corporation, is a direct, wholly owned limited purpose financing subsidiary of Capstead Mortgage Corporation ("CMC"), formerly Lomas Mortgage Corporation. Applicant was formed for the purpose of engaging in mortgage-backed financing, including issuing and selling one or more series of collateralized mortgage obligations (as defined below, "Bonds"). Applicant will not engage in any business or investment activities unrelated to such purpose.

2. Applicant will issue one or more series of Bonds under the terms of an indenture ("Indenture") between an independent trustee ("Indenture Trustee") and applicant as supplemented by one or more series supplements. The Indentures with respect to each series of Bonds which are publicly offered will be qualified under the Trust Indenture Act of 1939, as amended, unless an appropriate exemption is available.

3. With respect to any series of Bonds, applicant may sell its right (the "Residual Rights") under the Indenture to receive (a) the excess cash flow from the collateral after the payment of principal and interest on such series of Bonds and of expenses from the administration of the Bonds, plus (b) any remaining value in the collateral after the payment in full of the principal and interest on such series of Bonds. If a REMIC election is made with respect to a series of Bonds, applicant may issue certain certificates ("REMIC Certificates") representing the right to receive cash flow from the collateral included in such REMIC in excess of the amounts required to be paid on the Bonds issued by such REMIC in accordance with their terms and in excess of expenses of the REMIC, or may issue a single class of residual bonds (the "Residual Bonds") representing the residual interest in such REMIC. (The Residual Rights, REMIC Certificates, and Residual Bonds are referred to herein as the "Residual Interests"). All other classes of Bonds (other than Residual Bonds) with respect to such REMIC will represent the "regular interests" in the REMIC. Regular interests, together with all classes of Bonds of a series for which no REMIC election is made are referred to as "Regular Bonds." (Unless otherwise referred to below, all references to "Bonds" shall mean only the Regular Bonds.)

4. Applicant may sell the Residual Interests through a private placement exempt from registration under the Securities Act of 1933 (the "1933 Act") or through a public offering subject to registration under the 1933 Act; provided that in either case applicant satisfies the conditions set forth below under the "Conditions to Relief—C. Conditions Relating to Sale of Residual Interests."

5. The term "Bond" means: (a) A debt instrument which entitles the holder or owner only to (1) a specified principal amount, provided that interest (determined as provided below) that is not paid currently may be accrued and added to the principal of a Bond, and (2) either (A) interest based on such principal amount calculated by reference to (i) a fixed rate, (ii) a floating rate determined periodically by reference to an index that is generally recognized in financial markets as a reference rate of interest, or (iii) a rate or rates determined through periodic auctions among holders and prospective holders or through periodic remarketing of the instrument, or (B) an amount equal to specified portions of the interest received on the Mortgage Collateral (as defined below) held by the issuer, provided that the portion of the interest payable to the Bondholder or owner must be expected to provide a rate of return on the specified principal amount which bears a reasonable relationship to a market rate of interest; or (b) a zero coupon debt instrument which does not have a stated interest rate but on which interest effectively accrues from its issuance at a discount and which entitles the holder or owner only to a stated principal amount payable on or before a stated maturity date.

6. The Bonds of each series shall consist of one or more classes of Bonds, which may include one or more classes of (a) Bonds paying interest on a current basis, (b) compound interest Bonds or zero coupon Bonds, (c) reduced

volatility Bonds which may be planned amortization class Bonds or targeted amortization class Bonds, and (d) increased volatility Bonds which are also known as support bonds. Each class of Bonds may have a separate interest rate and stated maturity date as indicated in the related prospectus for such series of Bonds. Principal payments may be allocated to more than one class of Bonds, but such allocation will be consistent with the retirement of each class not later than its stated maturity date. A compound interest Bond is one on which interest is not paid currently but instead is accrued and added to the principal balance of the Bond on each payment date until certain Bonds with an earlier stated maturity date have been paid in full. A zero coupon Bond does not have a stated interest rate but interest effectively accrues from the issuance of such Bond at a discount with the stated principal amount being payable on or before the stated maturity date.

7. The "Mortgage Collateral" securing each series of Bonds which is owned by applicant will consist of Agency Certificates [1] or Non-Agency Certificates [2] (together, "Mortgage Certificates"). (The Mortgage Collateral and all other collateral securing the Bonds are collectively referred to as the "Collateral".) Applicant will neither issue nor own stripped mortgage-backed securities (as defined in the application).

8. In the case of each series of Bonds: (a) Applicant will own or hold no substantial assets other than the Mortgage Collateral and a limited amount of other collateral securing such Bonds; (b) the Mortgage Collateral will have a collateral value determined under the Indenture, at the time of issuance and following each payment date, equal to or greater than the outstanding principal balance of the Bonds; (c) scheduled distributions of principal and interest received on the Mortgage Collateral securing the Bonds (together with cash available to be withdrawn from any reserve funds, debt service funds, over-collateralization funds or other funds), plus reinvestment income thereon, will be sufficient to make timely payments of principal of and interest on the Bonds and to retire each class of Bonds by its stated maturity; and (d) the Collateral will be assigned to the Indenture Trustee and will be subject to the lien of the related Indenture.

9. Neither applicant, the Residual Interest holders nor the Indenture Trustee will be able to impair the security afforded by the Mortgage Collateral to the holders of the Bonds. Without the consent of each Bondholder to be affected, neither applicant, the Residual Interest holders nor the Indenture Trustee will be able to (a) change the stated maturity on any Bonds; (b) reduce the principal amount or the rate of interest (or the formula by which such rate is computed) on any Bonds; (c) change the priority of payment on any class of any series of bonds; (d) impair or adversely affect the Mortgage Collateral securing a series of Bonds; (e) permit the creation of a lien ranking prior to or on a parity with the lien of the related Indenture with respect to the Collateral; or (f) otherwise deprive the Bondholders of the security afforded by the lien of the related Indenture.

10. The interests of the Bondholders will not be compromised or impaired by the sale of Residual Interests. The sale of Residual Interests will not alter the payment of cash flows under the Indenture, including the amounts to be deposited in the collection account or any reserve fund created under the Indenture to support the payment of principal and interest on the Bonds.

11. Except to the extent permitted by the limited right to substitute Collateral, it will not be possible for the Residual Interest holders to alter the Collateral initially pledged to the Indenture Trustee, and in no event will such right to substitute Collateral result in a diminution in the value or quality of such Collateral. Although it is possible that any Mortgage Collateral substituted for Mortgage Collateral initially pledged to the Indenture Trustee may have a different prepayment experience than the original Collateral, the interests of the Bondholders will not be impaired because: (a) The prepayment experience of any Mortgage Collateral will be determined by market conditions beyond the control of the Residual Interest holders, which market conditions are likely to affect all Mortgage Collateral of similar payments terms and maturities in a similar fashion; and (b) the interests of the Residual Interest holders are not likely to be greatly different from those of the Bondholders with respect to Mortgage Collateral prepayment experience.

Applicant's Legal Conclusion

The requested order is necessary and appropriate in the public interest because: (a) Applicant should not be deemed to be an entity to which the provisions of the Act were intended to be applied; (b) applicant may be unable to proceed with its proposed activities if the uncertainties concerning the applicability of the Act are not removed; (c) the activities of applicant are intended to serve a recognized and critical public need; (d) granting the requested order will be consistent with the protection of investors because they will be protected during the offering and sale of the Bonds by the registration or exemption provisions of the 1933 Act, and thereafter by the Indenture Trustee representing their interests under the Indenture; and (e) the Residual Interests will be held entirely by applicant or offered only to a limited number of sophisticated institutional or "accredited" non-institutional investors.

Applicant's Conditions

Applicant agrees that if an order is granted it will be expressly conditioned on the following (unless otherwise indicated all references to "Bonds" shall mean only the Regular Bonds):

A. Conditions Relative to Regular Bonds

1. Each series of Bonds will be registered under the 1933 Act, unless offered in a transaction exempt from registration pursuant to section 4(2) of the 1933 Act.

2. The Bonds will be "mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934. In addition, the Mortgage Collateral securing the Bonds will be limited to Agency Certificates and Non-Agency Certificates.

3. If new Mortgage Collateral is substituted for Mortgage Collateral initially pledged as security for a series of Bonds, the substitute Mortgage Collateral must: (a) Be of equal or better quality than the Mortgage Collateral replaced; (b) have similar payment terms and cash flow as the Mortgage Collateral replaced; (c) be insured or guaranteed to the same extent as the Mortgage Collateral replaced; and (d)

[1] Agency Certificates are defined as (a) fully-modified pass-through mortgage-backed certificates ("GNMA Certificates") guaranteed as to timely payment of principal and interest by the Government National Mortgage Association ("GNMA"), (b) mortgage pass-through certificates ("FNMA Certificates") guaranteed as to timely payment of principal and interest by the Federal National Mortgage Association ("FNMA"), or (c) mortgage participation certificates ("FNMA Certificates") guaranteed as to timely payment of interest and under some programs timely payment of principal or under other programs ultimate collection of principal by the Federal Home Loan Mortgage Corporation ("FHLMC"). All or a portion of the Agency Certificates securing a series of Bonds may be "partial pool" Agency Certificates.

[2] Non-Agency Certificates are defined as pass-through certificates and participation certificates which are neither issued nor guaranteed by an agency or instrumentality of the United States and which evidence the entire undivided interest in pools of whole mortgage loans secured by first liens on single family (one to four unit) residential properties ("Mortgage Loans").

meet the conditions set forth in paragraphs 2. and 4. of this section A. New Non-Agency Certificates may be substituted for Non-Agency Certificates initially pledged only in the event of default, late payments, or defect in such Non-Agency Certificates being replaced. In addition, new Mortgage Collateral will not be substituted for more than 40% of the aggregate face amount of the Mortgage Collateral initially pledged as Mortgage Collateral. In no event may any new Mortgage Collateral be substituted for any substitute Mortgage Collateral.

4. All Mortgage Collateral, funds, accounts or other collateral securing a series of Bonds will be held by the Indenture Trustee or on behalf of the Indenture Trustee by an independent custodian (a "Custodian"). Neither the Custodian nor the Indenture Trustee will be an "affiliate" (as the term "affiliate" is defined in rule 405 under the 1933 Act, 17 CFR 230.405) of applicant or the master servicer or originating lender of any Mortgage Loans underlying Non-Agency Certificates securing a series of Bonds. If there is no master servicer, no servicer of those Mortgage Loans may be an affiliate of the Indenture Trustee or Custodian. The Indenture Trustee will be provided with a first priority perfected security or lien interest in and to all Collateral.

5. Each series of Bonds will be rated in one of the two highest bond rating categories by at least one nationally recognized statistical rating organization that is not affiliated with applicant. The Bonds will not be considered "redeemable securities" within the meaning of section 2(a)(32) of the Act.

6. No less often than annually, an independent public accountant will audit the books and records of applicant and, in addition, with respect to each series of Bonds, will report on whether the anticipated payments of principal and interest on the Mortgage Collateral continue to be adequate to pay the principal and interest on the Bonds in accordance with their terms. Upon completion, copies of the auditor's reports will be provided to the Indenture Trustee.

7. The master servicer of any Mortgage Loans underlying Non-Agency Certificates securing a series of Bonds may not be an affiliate of the Indenture Trustee or Custodian. If there is no master servicer for such Mortgage Loans, no servicer of those Mortgage Loans may be an affiliate of the Indenture Trustee or Custodian. In addition, any master servicer and any other servicer of the Mortgage Loans will be approved by FNMA or FHLMC as an "eligible seller/servicer" of conventional, residential Mortgage Loans. Each agreement governing the servicing of Mortgage Loans shall obligate the servicer to provide substantially the same services with respect to such Mortgage Loans as it is then currently required to provide in connection with the servicing of Mortgage Loans insured by the Federal Housing Administration, guaranteed by the Veterans Administration, or eligible for purchase by FNMA or FHLMC.

8. Beneficial and legal ownership of all Mortgage Collateral deposited with the Indenture Trustee will not be transferred until such time as the Indenture Trustee releases such Mortgage Collateral from the Indenture.

B. Additional Conditions Relating to Variable Rate Regular Bonds

1. The interest rate for each class of variable-rate Bonds will be subject to maximum interest rates ("interest rate caps") which may vary from period to period, and will always be specified in the related prospectus supplement for a series of Bonds.

2. The Collateral deposited with the Indenture Trustee to secure a series of Bonds will at all times be sufficient to provide for the full and timely payment of all principal and interest on the Bonds of such series under the assumption that the interest rate on all Bonds of such series (including any class thereof) is the maximum rate for each specific period.[3]

3. No Mortgage Collateral may be released from the lien of the Indenture prior to retirement in full of all Bonds of such series, except to the extent permitted by the limited right to substitute Collateral as described in the application.

C. Conditions Relating to the Sale of Residual Interests

1. Residual Interests will be sold or assigned only to a limited number, in no event more than one hundred, of institutional investors or non-institutional investors which are "accredited investors" as defined in Rule 501(a) of the 1933 Act. Residual Interests will be sold or assigned only with respect to a series of Bonds in which the Mortgage Collateral is limited to Agency Certificates. Institutional investors will have such knowledge and experience in financial and business matters as to be able to evaluate the risks of purchasing Residual Interests and to understand the volatility of interest rate fluctuations as they affect the value of mortgages, mortgage-related securities and residual interests therein. Non-institutional accredited investors, which may include individuals, will be limited to not more than fifteen, will be required to purchase at least $200,000 (measured by market value at the time of purchase) of such Residual Interests and will have a net worth at the time of purchase that exceeds $1,000,000 (exclusive of their primary residence). Non-institutional accredited investors will have such knowledge and experience in financial and business matters, specifically in the field of mortgage-related securities, as to be able to evaluate the risk of purchasing Residual Interests and will have direct, personal and significant experience in making investments in mortgage-related securities. Holders of Residual Interests will be limited to mortgage lenders, thrift institutions, commercial and investment banks, savings and loan associations, pension funds, employee benefit plans, insurance companies, mutual funds, real estate investment trusts or other institutions or non-institutional investors as described above that customarily engage in the purchase or origination of mortgages and other types of mortgage-related securities.

2. Each purchaser of a Residual Interest will be required to represent that it is purchasing such Residual Interest for investment purposes and not for distribution and that it will hold such Residual Interest in its own name and not as nominee for undisclosed investors. Each purchaser of a Residual Interest will be required to agree that it will not resell such interest unless (a) the subsequent purchaser would have been eligible to purchase the Residual Interest directly from applicant under the terms of Condition C.1, (b) after the sale there would be no more than one hundred Residual Interest holders, and (c) the subsequent purchaser agrees to be subject to the same representations and undertakings as are applicable to the reselling purchaser. Transfers of Residual Interests will be prohibited in any case where, as a result of the proposed transfer, there would be more than one hundred Residual Interest holders with respect to the series of Bonds at any time.

3. No holder of a controlling interest in applicant (as the term "control" is

[3] In addition to those mechanisms referred to in the application, applicant may utilize additional mechanisms to ensure the adequacy of the Collateral notwithstanding the issuance of Bonds bearing interest at variable rates. Applicant will give the staff of the SEC notice by letter of any such additional mechanisms before they are utilized to give the staff an opportunity to raise any questions as to their appropriateness. In all cases, these mechanisms will be adequate to ensure the accuracy of the representation and to meet the standards required for a rating of the Bonds in one of the two highest bond rating categories.

defined in rule 405 under the 1933 Act) will be affiliated with either the Custodian or any Rating Agency rating the Bonds.

4. No holder of a Residual Interest will be affiliated with the Indenture Trustee, the Custodian or any Rating Agency rating the Bonds.

5. If the sale of Residual Interests were to result in the transfer of control (as the term "control" is defined in Rule 405 under the 1933 Act) of applicant, the relief afforded by any order granted on the application would not apply to subsequent Bond offerings by applicant.

D. Conditions Relating to REMICs

1. The election by applicant to treat the arrangement by which any series of Bonds is issued as a REMIC will have no effect on the level of the expenses that would be incurred relating to such series. If such REMIC election is made with respect to a series of Bonds, applicant will provide that all administrative fees and expenses in connection with the administration of the trust estate will be paid or provided for in a manner satisfactory to each Rating Agency rating the Bonds.

2. In addition, applicant will ensure that the anticipated level of fees and expenses will be more than adequately provided for regardless of which method or combination of methods described in the application is selected to provide for the payment of such fees and expenses.

E. Special Condition

If any of the equity interests in applicant are sold and such sale results in the transfer of control (as the term "control" is defined in rule 405 under the 1933 Act) of applicant (except with respect to a transfer of control to an affiliate of CMC), the relief afforded by any order granted on the application would not apply to subsequent Bond offerings by applicant.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-925 Filed 1-13-92; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-5985]

Issuer Delisting; Application To Withdraw From Listing and Registration; Newcor, Inc., Common Stock, $1.00 Par Value

January 8, 1992.

Newcor, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and rule 12d2-2(d) promulgated thereunder to withdraw the above specified securities from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

According to the Company, on December 10, 1991, its Board of Directors unanimously approved to withdraw the Company's Common Stock from listing on the Amex and, instead, list such Common Stock on the National Association of Securities Dealers Automated Quotations/National Market System ("NASDAQ/NMS"). The Company's decision followed a lengthy study of the matter, and was based upon the Company's belief that listing of the Common Stock on NASDAQ/NMS will be more beneficial to its shareholders than the present listing on the Amex. The Company's belief is based on the following:

(1) The Company believes that the NASDAQ/NMS system of competing market makers will result in increased visibility and sponsorship for its Common Stock than is presently the case with the single specialist assigned to the stock on the Amex;

(2) The Company believes that the NASDAQ/NMS system will offer the Company's shareholders more liquidity than is presently available on the Amex and less volatility in quoted price per share when trading volume is slight;

(3) The Company believes that the NASDAQ/NMS system will offer the opportunity for the Company to secure its own group of market makers and, in so doing, expand the capital base available for trading in the Common Stock; and

(4) The Company believes that the firms making a market in the Company's Common Stock on the NASDAQ/NMS system will also be inclined to issue research reports concerning the Company, thereby increasing the number of firms providing institutional research and advisory reports.

Any interested person may, on or before January 29, 1992, submit by letter to the Secretary of the Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 92-849 Filed 1-13-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30161; File No. SR-Amex-90-29]

Self-Regulatory Organizations; Notice of Amendment No. 1 to Proposed Rule Change by American Stock Exchange, Inc. Relating to Restrictions on Competing Dealers

January 7, 1992.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 30, 1991, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the amendment to a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on Amendment No. 1 to the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex hereby amends its filing, File No. SR-Amex-90-29, to clarify the definition of competing dealer, to provide for an exception to the proposed restriction in Amex rule 126, to eliminate the proposed restriction in Amex rule 155, to request the Commission defer action on the proposed policy prohibiting the use of the Amex's Post Execution Reporting ("PER") System to route orders for the accounts of competing dealers, and to clarify the applicability of section 11(a)(1)(G) of the Act [1] to orders placed on the Exchange for the account of a non-member competing dealer. The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

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[1] 15 U.S.C. 78k(a)(1)(G) (1988).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments its received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

In December 1990, the Exchange filed a proposal to amend Amex rules 126 and 155, to add a Definition to its General and Floor Rules, and amend its policy regarding its automated routing system.[2] The proposal specifies that limit orders for the account of a competing dealer must yield priority and parity to all public customer orders, are on parity with bids and offers for the account of the Amex specialist, and are prohibited from the Amex's automatic order routing system. (For purpose of its rules governing precedence, priority and parity, the Exchange treats all orders originating from off the floor as public customer orders, except orders of competing dealers, as proposed, and orders of member firms executed by their own brokers.) In view of the discussions which have been generated by this proposal, the Exchange has determined to make the following amendments to its original proposal in order to focus the proposal more closely on the protection of public customer orders entered on the Amex.

First, the Exchange believes that orders for the account of a competing dealer that better the existing market by increasing the price of the existing bid or decreasing the price of the existing offer make a positive contribution to the primary market and should be encouraged. Therefore, the Exchange proposes to amend its proposal to exempt from the requirement that orders for the account of a competing dealer yield priority and parity to other off-floor orders any order for the account of a competing dealer that betters the existing market by improving the price of the existing bid or the existing offer. The Exchange's proposal will continue to require that orders for the account of a competing dealer that do not better the existing market yield priority and parity to all other off-floor orders.

Second, while the Exchange continues to be of the view that all market makers (its own specialists and registered traders as well as competing dealers) should be treated equally when buying or selling for their own accounts and, therefore, should be on parity, it is prepared to withdraw, for the time being, this portion of its proposal. Thus, specialists will continue to be required to accord precedence to limit orders for the account of a competing dealer placed on a specialist's book; but, only as between the specialist and the competing dealer. A competing dealer's order would never be eligible to retain priority over or gain parity with a public order unless, at the time it was placed on the book, the competing dealer's order bettered the existing market. The Exchange believes strongly that it should be permitted to accord priority to customer orders coming into its marketplace and that such a position is entirely consistent with the statutory framework under which it is regulated.

To further enhance the effectiveness of Amex's market in handling public customer orders, the original proposal prohibited the use of the Amex's PER system to automatically route orders for the account of a competing dealer to the Amex specialist's post. The Amex's PER system was designed and developed to service public customer orders, not those of competing dealers and not as an alternative to or to comptete with the Intermarket Trading System ("ITS"). Commentators on the Exchange's original proposal asserted that the prohibition on competing dealers' access to the PER system was a denial of equal access to an exchange system. These commentators ignored or attempted to distinguish the bars or limitations that apply to their own systems which are utilized to furnish orders to their markets. Although the Exchange continues to believe that use of the PER system should be limited to orders for the accounts of public customers, it is prepared to defer consideration of that aspect of the proposal until such time as the Commission has the opportunity to study and resolve the issues arising from statutory mandates to both provide protection to public customer orders and require equal access to exchange systems. It is assumed that the Commission will study the limitations on access to all marketplace systems—not just those employed by the primary markets.

In addition, the Exchange proposes to amend the filing to assure that section 11(a)(1)(G) of the Act is observed in its marketplace and that Amex rule 126 is applied accordingly. Section 11(a)(1) of the Act prohibits any member of an exchange from effecting any transaction on such exchange for its own account. Sub-paragraphs 11(a)(1)(A)–(H) provide exceptions to this prohibition; in particular, sub-paragraph (A) exempts a member acting in the capacity of a specialist and sub-paragraph (G) allows a member to effect a transaction for its own account provided the member is primarily engaged in a public securities business and the member yields priority, parity and precedence to all orders for the account of a non-member. Thus, a "G" order for the account of a member must yield priority, parity and precedence to an order for the account of a non-member competing dealer. Of course, the proposed requirement in Amex rule 126, that a competing dealer yield priority and parity to customer orders, would continue to apply.

(2) Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

[2] The proposed rule change was noticed in Securities Exchange Act Release No. 28741 (January 3, 1991), 56 FR 1038 (January 10, 1991).

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-90-29 and should be submitted by February 4, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-924 Filed 1-13-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30167; File No. SR-NYSE-91-43]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Listing Company Manual Requirements for Processing Subsequent Listing Applications

January 8, 1992.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 11, 1991, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to amend paragraphs 703.01-703.14, 903.02-903.12, 904.03-904.04, and 907.00 of its Listed Company Manual in order to streamline the Exchange's subsequent listing application procedure. This procedure is the Exchange's formal review of increases in the amount of securities listed or changes in a listed security and issuer requests to list another class or series of securities. The review process alerts the Exchange with respect to potential rule or policy violations arising from company actions involving a listed security and ensures that additional classes or series of securities to be admitted to dealings meet Exchange listing standards.

The proposed modifications are also part of the Exchange's overall effort to establish an electronic interface with listed companies. The revised form of application and other modifications are more compatible with electronic transmission of information relevant to the listing process.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Since codification of the procedures in 1953, dramatic changes within the regulatory and business environment have prompted the Exchange to evaluate the relevance of its subsequent listing application process. The proposed changes will preserve the Exchange's qualitative review while responding to the increased demand from listed companies and their legal/financial advisors for the Exchange to act upon subsequent listing applications in a more expeditious manner.

Changes with respect to SEC filing requirements, particularly shelf filing procedures, expedite registration under the Securities Act of 1933. The SEC's electronic filing system, commonly called EDGAR, will provide access to corporate disclosure documents on home and business computer screens and eliminate the lengthy paper documents listing companies now file with the SEC. The Exchange's proposal to streamline the subsequent listing process is consistent with SEC initiatives.

The business environment also has dramatically changed in recent years. The proliferation of derivative products, the growth of multiple class capital structures, and the sharp rise in the number of mergers and acquisitions have prompted a dramatic increase in the volume of subsequent listing applications that must be processed by the Exchange.

Accordingly, the Exchange proposes to modify its subsequent listing application process to keep pace with the demands and needs of the rapidly changing securities industry. While the proposed modifications provide for a more efficient procedure, they preserve the Exchange's regulatory function. The modifications will in no way diminish the Exchange's qualitative review process. The revised procedure will continue to alert the Exchange to potential rule or policy violations arising from company actions involving a listed security. It will continue to ensure that additional classes or series of securities to be admitted to dealings on the Exchange meet established listing standards.

The Exchange seeks specifically to revise the NYSE's Listed Company Manual, paragraphs 703.01-703.14, 903.02-903.12, 904.03-904.04, and 907.00. The proposed changes: (a) Simplify the subsequent listing application format; (b) reduce the number of required copies of the listing application and other supporting documents consistent with current NYSE needs; (c) delete certain supporting documents which are repetitive of information found in other required documents; (d) delete certain documents which are not pertinent to the Exchange's review process; (e) revise certain paragraphs in a manner consistent with prior rule changes approved by the SEC; and (f) expand the "Opinion of Counsel" with respect to the validity of the securities being listed. The expanded opinion also will verify that appropriate corporate action has been taken with respect to the issuance

[1] The exact text of the proposal was attached to the rule filing as Exhibit 2 and is available at the NYSE and the Commission at the address noted in item IV below.

and listing of such securities. Such corporate action is currently set forth in lengthy documentation that is being eliminated.

a. *Revision with respect to the format of the subsequent listing application.* The Exchange proposes to consolidate all types of subsequent listing applications into a single universal format that may be used for any listings other than an original listing. The Exchange also seeks to condense the application by eliminating information that is required in other documents. The revised application, when countersigned by the Exchange, will serve as format notice of authorization to list the securities.

b. *Decreasing the number of required copies of the subsequent listing application and certain supporting documents.* Since codification of the subsequent listing process in 1953, the Exchange has consolidated certain functions that pertain to the procedures within a single division of the Exchange. As a result, fewer copies satisfy the Exchange's needs today. Accordingly, the Exchange is proposing to reduce the required number of listing applications and of certain supporting documents consistent with the present structure of the organization.

c. *Deleting certain documentation which is repetitive of information found in other supporting documents.* (i) A Custodian Letter (para. 703.01(C), 703.08(H), and 904.03) is issued when the transfer agent and registrar must relinquish control of fully executed and countersigned securities into the custody of a representative of the company, prior to receipt of the consideration for said shares by the company, so that they may be available for delivery upon the closing of the transaction at a distant location. The proposal to delete this document is based on Exchange policy (paragraph 703.01(A)) of the NYSE Listed Company Manual) which states that "(t)he listing authorization (*e.g.*, to issue additional securities) is granted only if the securities are issued for the purpose, and under the terms and conditions authorized by the company's Board of Directors and as specified in the listing application * * *. Where listing is authorized upon 'official notice of issuance,' the listing becomes effective upon the Exchange's receipt of notice from the transfer agency (or other issuing agent) that the securities have been issued for the specified purpose." Given these other safeguards with respect to valid issuance of such securities for the stated purpose, the Custodian Letter is no longer required.

(ii) The Public Authority Certificate ("Certificate") requirement (para. 703.01(C), 703.02(F), 703.03(P), 703.04(D), 703.05(G), 703.06(G), 703.07(C), 703.09(E), 703.10(B), 703.11(B), and 703.13(C)) is being deleted in reliance upon the expanded opinion of counsel, as proposed in (f) below, that all appropriate public authority clearances have been obtained. The Certificate is required, in rare instances, to be submitted in connection with transactions subject to special regulatory review (*e.g.*, Federal Trade Commission or state public utility commission review). The rarity with which the Exchange has encountered such instances has led the Exchange to consider reliance upon the proposed expanded opinion of counsel that said approvals have been obtained.

(iii) Requirements for Board of Directors and shareholder approval resolutions (para. 703.01(C), 703.02(F), 703.3(P), 703.04(D), 703.05(G), 703.06(G), 703.07(C), 703.08(H), 703.09(E), 703.10(B), 703.11(B), 703.12(C), 703.13(C), and 703.14(D)) are being deleted in reliance upon the proposed expanded opinion of counsel that the directors and/or shareholders, as required by Exchange policy or corporate law, have approved the issuance and listing of the securities.

(iv) A Certificate of Transfer Agent (Para. 703.01(C), 703.05(G), and 703.10(B)) serves to advise the Exchange as to the number of issued and outstanding shares of the class or series which is the subject of the listing application. It is being eliminated since the Exchange authorizes securities for listing "* * * upon official notice of issuance * * *." (See Para. 703.01(A)). Such notice of issuance is received from the transfer agent in accordance with 703.01(A). Also, in situations involving the listing of a new security, the Exchange may request a distribution schedule which sets forth information regarding the size of holdings of the shares and the geographic distribution of the shares (Para. 904.01). Accordingly, the Certificate of Transfer Agent is deemed redundant and should no longer be required as a separate supporting document.

(v) A Trustee's Certificate (para. 703.01(C) and 703.06(G)) serves to confirm to the Exchange certain information with regard to the debt securities which are the subject of the listing application. The appointment of the trustee is confirmed in the revised Opinion of Counsel. The other items are contained in the indenture, which continues to be a supporting document. Therefore, the Trustee's Certificate is redundant and should no longer be required with respect to the subsequent listing review process. It will, however, remain as a required document for an original listing application.

(vi) A Certificate of Registrar (para. 703.01(C), 703.05(G), 703.10(B), and 703.13(C)) confirms the number of shares registered as of or about the date of the listing application. It is being deleted since securities are authorized for listing "* * * upon official notice of issuance * * *." (See Para. 703.01(A)). Such notice of issuance is received from the transfer agent in accordance with procedures set forth in the NYSE Listed Company Manual.

d. *Deleting certain documentation and procedures which are unnecessary to the exchange's qualitative review process.* (i) Pooling of Interest Opinion Letters (para. 703.01(C), 703.08(H), and 907.00) are being eliminated since information contained therein is no longer deemed necessary to the Exchange's qualitative review. The requirement to provide these letters is mandated by the accounting profession and is not a necessary condition to any Exchange action.

(ii) As long as a company remains at or above the Exchange's continued listing standards, the Exchange has determined that it is no longer necessary to scrutinize a stock split of a security which may result in an abnormally low price range, or of a security already selling in a low price range (Para. 703.02(A)).

(iii) The Exchange no longer considers relevant whether or not a finder's fee is paid in connection with a merger, acquisition or other business combination by a listed company (Para. 703.08(E)). The Exchange's shareholder approval policy, modified in July 1989, considers dilution only in terms of shares or voting power; therefore, any other consideration paid in such a transaction is not a factor in determining whether or not shareholder approval of such transaction is required.

e. *Revise certain paragraphs in a manner consistent with prior rule changes approved by the SEC.* Certain paragraphs of the Listed Company Manual reiterate practically verbatim policies of the Exchange. When these policies are modified it becomes necessary to make the appropriate edits wherever the policy is stated. The Exchange proposes, where these policies are reiterated, to furnish a simple cross-reference to the paragraph or section of the Listed Company Manual which contains the current policy. For example, the threshold requirement for obtaining shareholder approval, under certain conditions, was raised to 20% from 18.5%. In as much as this requirement is discussed at various

points, it is easier to refer to Paragraph 312.00, rather than to repeat the policy as modified.

f. *Expanded legal opinion.* The Opinion of Counsel, which is part of the Exchange's qualitative review, is being expanded to verify that necessary approvals, traditionally embodied on other documents, have been obtained. The opinion will be expanded to include: (a) The authorization of "listing" of securities by the Board of Directors; (b) the authorization by stockholders (in the manner prescribed by Exchange policy or corporate procedure) of the issuance of the securities; and (c) the authorization by the Board of Directors of the appointment of transfer agent, registrar, or trustee.

(2) *Statutory Basis*

The statutory bases for the proposed rule change is section 6(b)(5) of the Act which, among other things, requires Exchange rules to be designed to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither formally solicited nor does it intend to solicit comments regarding these proposed rule changes. The Exchange has not received any unsolicited written comments from members or other interested parties regarding these rule changes. Nevertheless, listing companies have informally observed from time to time that the subsequent listing application process should be simplified.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-91-43 and should be submitted by February 4, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92-923 Filed 1-13-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-30159; File No. SR-NYSE-91-32]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to the Listing of Long-Term Index Options

January 7, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 14, 1991, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE seeks authorization (i) to list, with respect to any class of index options, series of options expiring up to 36 months after they are listed ("long-term series") and (ii) to list long-term options on reduced value indexes. Pursuant to this proposed authority, the Exchange specifically intends to list long-term options on the NYSE Composite Index ("NYA") and on a new reduced value index that will be computed at one-tenth the value of the NYA Index ("NYA Reduced Value Index"). To accommodate the trading of long-term index options, the NYSE proposes to amend its strike price interval, bid/ask differential and price continuity rules to provide that they will not apply to long-term Index options until their time to expiration is less than twelve months. The proposed long-term index options will expire within one, two or three years of their initial listing, and the NYSE will retain the right to list options with intervening expirations at six-month intervals (*e.g.*, 1½ years and 2½ years). To accommodate the trading of reduced value index options, the NYSE proposes to amend its rules to allow strike price interrvals of $2.50, rather than $5.00, for the reduced value index options, and to provide that positions in full value index options will be aggregated with positions in corresponding reduced value index options to determine compliance with position and exercise limits. The text of the proposed rule change is available at the office of the Secretary, NYSE and at the Commission.[1]

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[1] On December 11, 1991, the NYSE amended its proposal to provide that (i) the Exchange will list only six additional expiration months in long-term index options; (ii) the strike price interval rules set forth in Exchange Rule 703, Supplementary Material .30(b) Will not apply to long-term index options until their time to expiration is less than 12 months; (iii) the position and exercise limits for reduced value broad index group options will be 450,000 contracts on the same side of the market covering the same underlying stock index group,no more than 250,000 of which may be in the series having the nearest expiration date; and (iv) reduced value options on broad index stock groupus will be considerdd ⅒ of a ful value contract for position and exercise limit purposes. *See* File No. SR-NYSE-91-32. Amendment No. 1.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(i) *Purpose.* The NYSE seeks authorization (i) to list, with respect to any class of index options, series of options expiring up to 36 months after they are listed ("long-term series") and (ii) to list long-term options on reduced value indexes. Pursuant to this proposed authority, the Exchange specifically intends initially to list long-term options on the NYA Index and the NYA Reduced Value Index.[2]

The proposed long-term index options will expire within one, two or three years of their initial listing, and the NYSE will retain the right to list options with intervening expirations at six-month intervals (*e.g.*, 1½ years and 2½ years).

The Exchange proposes to add Supplementary Material .20(a)(ii) to Exchange Rule 703, which will provide that the strike price interval, bid/ask differential and price continuity rules set forth, respectively, in Exchange Rule 703, Supplementary Material .30(b), entitled "Series of Options Open for Trading, Exchange Rule 758(b)(i)(C), entitled "Competitive Options Traders" ("COTs"), and Exchange Rule 750(e)(i), entitled "Rules of General Applicability," will not apply to long-term index options until their time to expiration is less than twelve months.[3] However, the Exchange's general rules obligating options specialists and COTs to maintain fair and orderly markets (Exchange Rules 750(b) and 758(b)(i)(B)) will continue to apply. Accordingly, the NYSE believes that the waiver of the bid/ask differential and price continuity rules will not impede the Exchange's ability to make a finding of inadequate market-maker performance should a specialist and/or a COT enter into transactions or make bids or offers in long-term stock index option series that are inconsistent with the maintenance of a fair and orderly market. In addition, the NYSE will closely monitor the trading in long-term index options to gain experience with them and, after one year, will reexamine the applicability of the strike price interval, price continuity, and bid/ask differential rules to long-term index options.[4]

Long-term options on reduced value indexes will trade independent of and in addition to options on the corresponding full value index traded on the NYSE. Long-term options on reduced value indexes will be subject to the same rules that govern the trading of NYSE-listed options on stock index groups, including sales practice rules, margin requirements, and floor trading procedures, except that the Exchange proposes to amend Exchange Rule 703, Supplementary Material .30(d) to allow strike price intervals of $2.50, rather than $5.00, for reduced value index options. Other than the reduced value and strike price intervals, all other specifications and calculations for a reduced value index remain the same as for the corresponding full value index. In addition, under the proposal, positions in full value index options must be aggregated with positions in corresponding reduced value index options for purposes of determining adherence to position and exercise limits.[5] Finally, as in the case of all other indexes, the NYSE will continuously calculate and disseminate the underlying value of a reduced value index in addition to the value of the corresponding full value index.

The NYSE proposes to retain flexibility in the listing of new strike prices for long-term options on reduced value indexes. Initially, the NYSE intends to list such strike prices near or bracketing the then current reduced index value. The NYSE proposes to add additional strike prices for long-term reduced value stock index options only when the relevant index (and thus the overall market) makes significant moves of approximately 10 to 15 percent, but a new expiration month will not be added more than every six months. The Exchange believes that this procedure should result in the listing of only a limited number of series for any expiration, thereby eliminating the confusion that might otherwise result from a myriad of strike prices and expirations. The NYSE also expects to act conservatively in adding new strike prices for long-term options on its full value indexes.

The NYSE believes that reduced value indexes, coupled with the Exchange's strike price policy for reduced value index options, will serve the needs of retail investors by providing them with the opportunity to use long-term options to protect their portfolios from long-term market moves at a reduced cost and by providing them with a medium-term investment in a security that tracks market-wide price movements. The NYSE notes that such a result could not be achieved by using full value index options without the listing of strike prices so deeply out-of-the money and away from the current value of the index as to offer investors limited ability to participate in the market or protect their portfolios.

In addition, the NYSE believes that the proposal responds to the needs of portfolio managers and institutional customers by providing them with a means to protect their positions from long-term market moves. Currently, institutional investors can insure their portfolios with either futures positions or off-exchange customized options. The proposed rule change will provide institutional investors with the additional alternative of hedging portfolio risks through the use of standardized options that have the benefit of being issued and cleared by the Options Clearing Corporation and traded in a centralized, regulated secondary market on the NYSE. The NYSE also believes that the proposed rule change will add liquidity to the market by allowing institutional investors to hedge the risks of their stock portfolios over a longer period of time and with a known and limited cost.

(ii) *Basis.* The NYSE believes that the proposed rule change is consistent with the requirements of the Act and, in particular, furthers the objectives of section 6(b)(5) because the proposal promotes just and equitable principles of trade, facilitates transactions in

[2] The NYSE will use the following procedure in rounding the reduced value index: the Exchange will divide the calculated value of the full value NYA Index by 10 and round the resulting quotient to the nearest one-hundredth. The digits one through four will be rounded down to the nearest number and the digits five through nine will be rounded up to the next number.

[3] Specialists will be relieved of their obligations with respect to minimum bid/ask differentials by virtue of NYSE Rule 750(e)(i)'s incorporation of the minimum bid/ask differentials specified in NYSE Rule 758(b)(i)(C)(1), as amended by the proposal.

[4] *See* Amendment No. 1, *supra* note 1.

[5] For example, because one full value NYA Index contract is equivalent to ten NYA Reduced Value Index contracts, each NYA Reduced Value Index contract will be considered 1/10th of a NYA contract when NYA and NYA Reduced Value Index contracts are aggregated for position and exercise limit purposes.

securities, and protects investors and the public interest

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NYSE believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The NYSE has not solicited, and does not intend to solicit, comments on the proposed rule change. The NYSE has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NYSE has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act because the proposal is based in substance on the existing rules of other options exchanges.[6]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[7] First, the Commission believes that the proposal to list long-term index options that expire up to 36 months from the date of issuance is designed to provide investors with additional means to hedge equity portfolios from long-term market risk, thereby facilitating transactions in options and contributing to the protection of investors and the maintenance of fair and orderly markets.

Currently, investors use index options to, among other things, hedge the risks associated with holding diversified equity portfolios. The Commission believes that the Exchange's proposal to provide long-term index options, which will allow investors to lock in their hedges for up to three years, will permit investors to better protect their portfolios from adverse market moves. Further, the Commission believes that long-term options will allow this protection to be provided at a known and limited cost. Finally, the proposal will provide investors with an alternative to hedging portfolios with off-exchange customized derivative instruments, or short-term, non-extended exchange-traded index options. Accordingly, the Commission believes that the proposal to list long-term index options will better serve the long-term hedging needs of investors.

The Commission notes that the Exchange's strike price interval, bid/ask differential, and price continuity rules will not apply to such long-term option series until their time to expiration is less than 12 months. This approach is consistent with the approach taken by the Amex, CBOE, and PSE [8] because of the lack of historical pricing data for long-term options. Strike price interval requirements and bid/ask differential and price continuity rules currently applicable to index options are based on options that expire 12 months from the time they begin trading. Therefore, there currently is no basis for establishing reasonable prices for long-term index options that will expire more than 12 months from the time they begin trading.

The Commission notes that although specific strike price interval, bid/ask differential and price continuity rules will not apply to long-term index options that have over 12 months to expiration, the NYSE's general rules obligating COTs and options specialists to maintain fair and orderly markets (Exchange Rules 750(b) and 758(b)(i)(B)) will continue to apply. The Commission believes that the requirements of these rules are broad enough, even in the absence of bid/ask differential and continuity requirements, to provide the Exchange with the authority to make a finding of inadequate specialist or COT performance should these specialists or COTs enter into transactions or make bids or offers (or fail to do so) in long-term options that are inconsistent with their obligations as market makers. Finally, the Commission notes that the strike price interval, bid/ask differential and continuity rules will apply to long-term stock index options series that expire in less than 12 months. In addition, the NYSE has stated that it will monitor the trading in long-term index options closely to gain experience with regard to these options, and that it will reexamine the applicability of these rules to the long-term options in one year's time.[9]

Second, the Commission believes that the NYSE's proposal to list reduced value NYA Index options, computed at one-tenth of the value of the NYA, will facilitate transactions in options by providing investors with additional means to hedge their equity portfolios against long-term market risk.[10] Specifically, the reduced value of the NYA Index likely will result in options premiums that are more affordable to retail investors.[11] Thus, the options on reduced value indexes will serve the needs of retail investors by providing them with long-term options to protect their portfolios from long-term market moves at a reduced cost.

The Commission also believes that trading in Reduced Value NYA options will not have an adverse market impact or be susceptible to manipulation. Previously, the Commission has determined that the NYA Index is a broad-based index.[12] The Commission does not believe that merely changing the Index by dividing its value by 10 will change this determination. The NYA Reduced Value Index will contain the same stocks with the same weightings as the full value NYA Index and will be calculated in the same manner as that index (with the exception of being 1/10th its value). In addition, the Commission believes that any potential

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[6] *See e.g.*, Securities Exchange Act Release Nos. 25041 (October 16, 1987), 52 FR 40008 (October 26, 1987) (order approving SR-Amex-87-22, providing for the trading of long-term index options on the American Stock Exchange ("Amex")); 24853 (August 27, 1987), 52 FR 33486 (September 3, 1987) (order approving SR-CBOE-87-24, providing for the trading of long-term index and equity options on the Chicago Board Options Exchange ("CBOE")); and 28589 (October 31, 1990), 55 FR 46882 (order approving SR-PSE-90-35, providing for the listing of long-term index and equity options on the Pacific Stock Exchange ("PSE")) (collectively termed "Long-Term Stock Index Options Approval Orders"). *See also* Securities Exchange Act Release Nos. 28613 (November 14, 1990), 55 FR 48307 (order approving SR-Amex-90-14, providing for trading of reduced value Major Market Index ("XMI") options); 28686 (December 10, 1990), 55 FR 51517 (order approving SR-CBOE-90-30, providing for listing of long-term options on reduced value Standard & Poor's 100 and 500 Stock Indexes ("OEX" and "SPX", respectively)); and 29346 (June 19, 1991), 56 FR 29509 (order approving SR-PHLX-91-02, providing for listing of reduced value long-term options on the Value Line Index) (together, the "Reduced Value Stock Index Options Approval Orders").

[7] 15 U.S.C. 78f(b)(5) (1982).

[8] *See* Long-Term Options Approval Orders, *supra* note 6.

[9] *See* 2Amendment No. 1, *supra* note 1.

[10] Pursuant to section 6(b)(5) of the Act, the Commission must predicate approval of any new securities product upon a finding that the introduction of such a product is in the public interest. Such a finding would be difficult with respect to a product that served no hedging or other economic function because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[11] The Commission notes that the NYSE must submit proposals to list reduced value stock index options on indexes other than the NYA to the Commission as proposed rule changes pursuant to section 19(b)(1) of the Act.

[12] *See* Securities Exchange Act Release No. 19264 (November 22, 1982), 47 FR 53981 (order approving File No. SR-NYSE-82-2).

manipulation concerns raised by options on reduced value indexes are minimized by the fact that positions in these options will be aggregated with positions in options on the corresponding full value indexes for position and exercise limit purposes.[13] Moreover, the Commission notes that the Exchange will use the same surveillance procedures for both full value and Reduced Value NYA Index options. Finally, the Commission believes that reducing the strike price interval for reduced value index options is reasonable given the level of these reduced value indexes and the fact that any changes in value of the reduced value indexes will occur at a rate which is 1/10th of the rate at which the indexes on which they are based will change.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** because the NYSE's proposal is identical to proposals by the Amex, CBOE, PHLX and PSE to trade long-term index options, which the Commission has already approved.[14] In addition, the NYSE's proposal to list long-term index options on reduced value indexes is identical to the Amex's proposal to trade options on a reduced value XMI, the CBOE's proposal to trade reduced value SPX and OEX options, and the PHLX's proposal to list options on a reduced value Value Line Index.[15] These proposals were subject to the full notice and comment period and the Commission did not receive any comments on them. Accordingly, since the Commission does not find any different regulatory issues arising out of the NYSE's proposal, the Commission believes it is appropriate to approve the proposed rule change on an accelerated basis in order to facilitate competition among the exchanges for product services, which, in turn, should benefit public investors. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with Section 6 of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by February 4, 1992.

It Is Therefore Ordered, Pursuant to section 19(b)(2) of the Act,[16] that the proposed rule change (SR–NYSE–91–32) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 92–926 Filed 1–13–92; 8:45 am]

BILLING CODE 8010–01–M

[13] *See supra* note 5.

[14] *See* Long-Term Options Approval Orders and Reduced Value Stock Index Options Approval Orders, *supra* note 6.

[15] *See* Reduced Value Stock Index Options Approval Orders, *supra* note 6

[16] 15 U.S.C. 78s(b)(2) (1982).

[17] 17 CFR 200.30–3(a)(12) (1990)

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 1541]

Delegation of Authority No. 192 Under Secretary for Management

By virtue of the authority vested in me as Secretary of State, including the authority of section 4 of the Act of May 16, 1949 (22 USC 2658), I hereby delegate the waiver and certification function vested in the Secretary of State by section 502 of the Departments of Commerce, Justice, and State, and the Judiciary, and Related Agencies Appropriations Act for Fiscal Year 1992 (Pub. L. 102–140) to the Under Secretary for Management.

Notwithstanding this delegation of authority, the Secretary of State or the Deputy Secretary of State may exercise the function herein delegated.

Dated: December 10, 1991

James A. Baker, III.

Secretary of State.

[FR Doc. 92–910 Filed 1–13–92; 8:45 am]

BILLING CODE 4710–10–M

[Public Notice 1549]

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 44 U.S.C. chapter 35.

SUMMARY: Section 101(a)(27)(D) of the Immigration and Nationality Act, 8 U.S.C. 1101(a)(27)(d), provides for the granting of special immigrant status for a person (and accompanying spouse and children) who is an employee or an honorably retired former employee of the United States Government abroad, and who has performed faithful service for a total of fifteen years or more, contingent upon a recommendation by the principal officer of the Foreign Service establishment and approval by the Secretary of State after finding that it is in the national interest to grant such status. The following summarizes the information collection proposal submited to OMB:

Type of request—New.
Originating office—Bureau of Consular Affairs.
Title of information collection—Petition to Classify Special Immigrant Under INA 203(b)(4) as an Employee or Former Employee of the U.S. Government Abroad.
Frequency—One-time filing.
Form No.—DS–1884.
Respondents—Alien Employees and Former Employees of the U.S. Government Abroad.
Estimated number of respondents—500.
Average hours per response—30 minutes.
Total estimated burden hours—250.

Section 3504(h) of Public Law 96–511 does not apply.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook, (202) 647–3538. Comments and questions should be directed to (OMB) Lin Liu, (202) 395–7340.

Dated: December 26, 1991.

Sheldon J. Krys,

Assistant Secretary for Diplomatic Security.

[FR Doc. 92–823 Filed 1–3–92; 8:45 am]

BILLING CODE 4710–43–M

DEPARTMENT OF TRANSPORTATION

Applications of International Cargo Xpress, Inc., for Certificate Authority Under Subpart Q

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause, (Order 92–1–9) Dockets 47749 and 47750.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue orders finding International Cargo Xpress, Inc., fit and awarding it certificates of public convenience and necessity to engage in interstate, overseas, and foreign charter air transportation of persons and property.

DATES: Persons wishing to file objections should do so no later than January 16, 1992.

ADDRESSES: Objections and answers to objections should be filed in Dockets 47749 and 47750 and addressed to the Documentary Services Division (C–55, room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Mrs. Kathy Lusby Cooperstein, Air Carrier Fitness Division (P–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2337.

Dated: January 6, 1992.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 92–900 Filed 1–13–92; 8:45 am]

BILLING CODE 4910–62–M

Federal Highway Administration

Environmental Impact Statement, Brown County, WI

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to adviser that an environmental impact statement will be prepared for a proposed highway improvement project in Brown County, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Ms. Jaclyn Lawton, Environmental Coordinator, Federal Highway Administration, 4502 Vernon Boulveard, Wisconsin, Wisconsin 53705–4905; Telephone (608) 264–5967.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Wisconsin Department of Transportation (WISDOT), is currently preparing an environmental impact statement for the construction of a four-lane facility for Highway 57. The project begins at the interestion with Highway 54 easterly of Green Bay and extends of Highway "A" northerly of Dyckesville. The project is located in the northeasterly section of Brown County. The proposed project would consist of adding two lanes to the existing facility, four lanes on new location or a combination of add lanes and new location. The project would serve to reduce heavy congestion and the accident potential along the existing route. Planning, environmental and engineering studies are underway to develop transportation alternatives. The EIS will assess the need, location, and environmental impacts of alternatives including: (1) *No Build*—This alternative assumes the continued use of existing facilities with the maintenance necessary to ensure their use; (2) *Upgrade the Existing Facility*—This alternative would improve the safety and traffic handling capability of the existing route; and (3) *Construction of Add Lanes and/or on New Alignment*—This alternative would involve construction of two new lanes adjacent to the existing facility, constructing four lanes on new location, or a combination of add lanes and new location.

Coordination & Scoping Process

Coordination activities have begun. Scoping meetings have been and will be held on an individual and/or group meeting basis. Agency coordination will be accompolished during these meetings. Questions and comments from individuals and agencies concerning this proposed action and the environmental impact statement should be directed to the FHWA at the address provided.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Coordination. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: December 31, 1991.

Robert W. Cooper,

District Engineer, Madison, Wisconsin.

[FR Doc. 92–716 Filed 1–13–92; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement, Oconto County, Wisconsin

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise that an environmental impact statement will be prepared for a proposed highway improvement project in Oconto County, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Ms. Jaclyn Lawton, Environmental Coordinator, Federal Highway Administration 4502 Vernon Boulevard, Madison, Wisconsin 53705–4905; telephone (608) 264–5967.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Wisconsin Department of Transportation (WisDOT), is currently preparing an environmental impact statement for the construction of a four-lane facility for Highway 141. The project begins at the intersection with County Highway "E" near Abrams and extends north to McCarthy Road north of Stiles. The project is located in the central section of Oconto County. The proposed project would consist of adding two lanes to the existing facility, four lanes on new location, or a combination of add lanes and new location. The project would serve to reduce heavy congestion and the accident potential along the existing route.

Planning, environmental, and engineering studies are underway to develop transportation alternatives. The EIS will assess the need, location, and enviornmental impacts of alternatives inluding: (1) No Build—This alternative assumes the continued use of existing facilities with the maintenance necessary to ensure their use; (2) Upgrade the Existing Facility—This alternative would improve the safety and traffic-handling capability of the existing route; and (3) Construction of Add Lanes and/or New Alignment—This alternative would involve construction of two new lanes adjacent to the existing facility, constructing four lanes on new location, or a combination of add lanes and new location.

Coordination and Scoping Process

Coordination activities have begun. Scoping meetings have been and will be held on an individual and/or group meeting basis. Agency coordination will be accomplished during these meetings. Questions and comments from individuals and agencies concerning this proposed action and the environmental impact statement should be directed to the FHWA at the address provided.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Coordination. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: December 31, 1991.

Robert W. Cooper,

District Engineer, Madison, Wisconsin.

[FR Doc. 92-715 Filed 1-13-92; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

[Docket No. 91-59; No. 2]

General Motors Corp.; Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by General Motors Corporation to be exempted from the notification and remedy requirements of the National Highway Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that its noncompliance with Motor Vehicle Safety Standard No. 106 is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on November 29, 1991, and an opportunity afforded for comment (56 FR 61080).

Based on information provided by the Weatherhead Division of Dana Corporation, GM determined that certain air brake hoses installed in approximately 1,699 model year 1988 through 1990 GM school bus chassis and medium duty trucks failed to meet the adhesion requirements of S7.3.7 of Federal Motor Vehicle Safety Standard No. 106, "Brake Hoses." Section S7.3.7 requires that, except for hose reinforced by wire, an air brake hose shall withstand a tensile force of 8 pounds per inch of length before separation of adjacent layers. GM supported its petition with the following information:

1. Each of the applications of the subject hoses in GM vehicles is a pressure application, not a vacuum application. Thus, the inner hose layer would not collapse even if the layers were to delaminate such that air could enter between the layers of the hoses.

2. The hose material was assembled into hose assemblies for all applications in GM vehicles. Thus, each end of the hose has an end fitting assembled to the hose by a crimping process. There are two important aspects of the assembly. First, the end fittings have the effect of capturing the hose material, such that the hose is not subject to shearing forces that would act to delaminate the layers of the hose. Second, even if the layers could delaminate, there should be no path for air pressure to enter between the layers because of the end crimping of the hose layers.

3. All of the subject hose material is of a spiral design with pin-pricked covers to allow any air which enters between the layers of the hose to escape. This further diminishes any likelihood that positive air pressure could build on the outside of the inner layer and cause it to collapse.

4. The affected GM vehicles are all equipped with split service brake systems. Therefore, any service failure of the subject air brake hoses would leave the driver with partial brake system performance and stopping capability.

GM stated that, in summary, a sequence of events, each of which is virtually precluded by the application in GM vehicles, would have to occur for this noncompliance to have an adverse effect on safety.

First, the layers would have to delaminate, which is prevented by the end fittings which 'capture' the hose material. Next, air pressure would need to enter between the layers of the hose, which is prevented by the crimping of the end fittings to the hose. And finally, positive differential air pressure would need to build up on the outside of the inner layer, which is prevented by both the spiral and pin-pricked hose design, and also by virtue of the pressure, rather than vacuum, applications of the subject hoses in GM vehicles. . . .

GM also stated that the data which have previously been submitted to the agency are similar to those of petitions for exemption submitted by Navistar and Mack Trucks. Also, the comments of Dana Corporation in support of the Navistar and Mack petitions, are applicable to the subject air brake hoses installed in GM vehicles.

No comments were received on the petition.

At the time the petitioner filed its petition, the petitions by two other users of the Dana Weatherhead hose, Navistar International and Mack Trucks, Inc., were still under consideration. These petitions were granted on October 11, 1991 (56 FR 51440) on the basis of the following arguments:

1. The end use of the hoses was such that they were subject to pressure, not vacuum applications.

2. If the hoses were used in vacuum applications, their crimped end fittings make it unlikely that air would become trapped between the layers of the hose.

3. If there is any permeation of air from the inner tube, the hoses are designed to release it through the pin-pricked outer layer.

These arguments are similar to those raised by GM in support of its petition. The petitioner uses the Weatherhead hoses in pressure applications. The outer layer of the hoses is pin-pricked. The hoses are equipped with the same crimped end fittings as the Weatherhead hoses.

Accordingly, petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted.

(15 U.S.C. 1417 delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on January 7, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-901 Filed 1-13-92; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 91-52; No. 2]

Volvo GM Heavy Truck Corp., Grant of Petition for Determination of Inconsequential Noncompliance

Volvo GM Heavy Truck Corporation (Volvo GM) of Greensboro, North Carolina, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that its noncompliance with Motor Vehicle Safety Standard No. 106 is inconsequential as it relates to motor vehicle safety.

Notice of receipt of a petition was published on October 24, 1991, and an opportunity afforded for comment (56 FR 55151).

Paragraph S7.3.7 of Standard No. 106 requires that, except for hose reinforced by wire, an air brake hose shall withstand a tensile force of 8 pounds per inch of length before adjacent layers separate. As a result of a routine compliance test by the National Highway Traffic Safety Administration, it was discovered that certain air brake hoses (Weatherhead H33806 and H33808) manufactured by the Dana Corporation failed to comply with the adhesion requirement of Standard No. 106. Upon finding the above mentioned test failure, NHTSA opened a noncompliance investigation numbered NCI 3166. As a result, the Dana Corporation agreed to conduct a notification and remedy campaign. The recall campaign number is 90E-045. Volvo GM trucks are equipped with the noncompliant hoses, and it petitioned the agency in response to the notification issued by the Dana Corporation.

Volvo GM reported that it manufactured 3,299 truck tractors between February 9, 1988 and December 12, 1989, that are equipped with the

noncompliant hoses. It supported its petition with the following:

1. Volvo GM installed the suspect hose assemblies in non-vacuum applications, specifically as tractor to trailer connecting hoses. In support of this statement, Volvo GM presented the following arguments taken from a Dana Weatherhead letter to Volvo GM dated August 12, 1991:

Proponents of the FMVSS adhesion factor contend that air could be trapped in the reinforcement of the hose an low adhesion could result in the inner tube . be(ing) imploded (and) restricting the flow of air which may increase the response time. However air would not be trapped as the cover of all air brake hose produced by the supplier, Boston Industrial Products Division of Dana, is pin-pricked along the length of the hose.

Furthermore, the imploding or ballooning effect of the inner tube as noted above can only occur if there is a pressure differential across the inner tube. There would need to be a negative pressure or vacuum on the inside of the tube for this to occur. It is Dana's understanding (that) current air brake systems where this hose is used are subjected to internal pressures in the 0 to 120 psi pressure range.

2. Volvo GM is not aware of any accidents, complaints or warranty (claims) related to the use of these hoses.

3. It is Volvo GM's belief that the installation of the Weatherhead hoses on its vehicles is consistent with industry standards and the installation (practices described) * * * in the petition filed by Navistar International Transportation Corporation and Mack Trucks, Inc. Therefore, Volvo GM believes it should be granted any such relief from recall as will be granted the other petitioners.

No comments were received on the petition.

At the time the petitioner filed its petition, the petitions by two other users of the Dana Weatherhead hose, Navistar International and Mack Trucks, Inc., were still under consideration. These petitions were granted on October 11, 1991 (56 FR 51440), on the basis of the following arguments:

1. The end use of the hoses was such that they were subject to pressure, not vacuum applications.

2. If the hoses were used in vacuum applications, their crimped end fittings make it unlikely that air would become trapped between the layers of the hose.

3. If there is any permeation of air from the inner tube, the hoses are designed to release it through the pin-pricked outer layer.

The petitioner uses the Weatherhead hoses in pressure applications. The outer layer of the hoses is pin-pricked. The hoses are equipped with the same crimped end fittings as the Weatherhead hoses. Thus, the same factors exist in this case as in the previous petitions which were granted.

Accordingly, petitioner has met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is granted.

Authority: 15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on: January 7, 1992.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 92-903 Filed 1-13-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: January 7, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-1145.
Form Number: IRS Form 706GS(T).
Type of Review: Revision.
Title: Generation-Skipping Transfer Tax Return for Terminations.
Description: Form 706GS(T) is used by trustees to compute and report the Federal Generation-Skipping Transfer (GST) tax imposed by Internal Revenue Code (IRC) section 2601. IRS uses the information to enforce this tax and to verify that the tax has been properly computed.
Respondents: Individuals or households.
Estimated Number of Respondents/ Recordkeepers: 150,000.
Estimated Burden Hours Per Respondent/Recordkeeper:

	706GS(T)	Schedule A	Schedule B
Record-keeping.	40 min.	13 min.	13 min.
Learning about the law or the form.	28 min.	17 min.	4 min.
Preparing the form.	32 min.	37 min.	20 min.
Copying, assembling, and sending the form to IRS.	20 min.	20 min.	20 min.

Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 205,500 hours.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92-993 Filed 1-13-92; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Date: January 8, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0950.
Form Number: IRS Form 23.
Type of Review: Extension.
Title: Application for Enrollment to Practice Before the Internal Revenue Service.
Description: The information relates to the granting of enrollment status to individuals admitted (licensed) by the

Internal Revenue Service to practice before the Internal Revenue Service.
Respondents: Individuals or households.
Estimated Number of Respondents: 2,000.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: Annually.
Estimated Total Reporting Burden: 2,000 hours.
Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92–994 Filed 1–13–92; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

Date: January 6, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt

OMB Number: New.
Form Number: None.
Type of Review: New collection.
Title: Investor Survey.
Description: This survey is to determine investor's utilization of and satisfaction with Treasury Direct book-entry securities system.
Respondents: Individuals or households, Small businesses or organizations.
Estimated Number of Respondents: 2,000.
Estimated Burden Hours Per Response: 5 minutes.
Frequency of Response: Other (One-time survey).
Estimated Total Reporting Burden: 140 hours.
Clearance Officer: Rita DeNagy (202) 447–1315, Bureau of the Public Debt, room 137, BEP Annex, 300 13th Street, SW., Washington, DC 20239–0001.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92–916 Filed 1–13–92; 8:45 am]

BILLING CODE 4810–40–M

Fiscal Service

[Dept. Circ. 570, 1991 Rev., Supp. No. 9]

Surety Companies Acceptable on Federal Bonds; Sorema North America Reinsurance Co.

A Certificate of Authority as an acceptable surety on Federal Bonds is hereby issued to the following company under sections 9304 to 9308, title 31, of the United States Code. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1991 Revision, on page 30162 to reflect this addition:

Sorema North America Reinsurance Company. Business Address: 199 Water Street, New York, NY 10038–3526. Underwriting Limitation *b/*: $9,611,000. Surety Licenses *c/*: AK, AZ, CT, DC, ID, IL, MI, MS, MT, NE, NM, NY, OR, TN, TX, UT, WA, WI, WY. Incorporated in: New York.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR, part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

Copies of the Circular may be obtained from the Surety Bond Branch, Funds Management Division, Financial Management Service, Department of the Treasury, Washington, DC 20227, telephone (202) 874–6850.

Dated: January 7, 1992.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 92–828 Filed 1–13–92; 8:45am]

BILLING CODE 4810–35–M

[Dept. Circ. 570, 1991 Rev., Supp. No. 10]

Surety Companies Acceptable on Federal Bonds; Winterthur Reinsurance Corp. of America

The above mentioned company was listed in 56 FR 30171, July 1, 1991, as an acceptable reinsuring company on Federal Bonds. Federal bond-approving officers are hereby notified that Winterthur Reinsurance Corporation of America is now an acceptable surety on Federal bonds. The officers should annotate their reference copies of the Treasury Circular 570, 1991 revision, on page 30169 to reflect the following information:

Winterthur Reinsurance Corporation of America. Business Address: Two World Financial Center, 225 Liberty Street, 42nd Floor, New York, NY 10281. Underwriting Limitation [b] : $15,631,000. Surety Licenses [c] : AL, AZ, CA, DC, FL, IL, IN, IA, KY, LA, MA, MI, MN, MT, NE, NJ, NM, NY, ND, OH, OK, OR, PA, RI, SC, SD, TX, UT, VT, WA, WV, WI. Incorporated in: New York.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington DC 20227, telephone (202) 874–6850.

Dated: January 7, 1992.

Charles F. Schwan III,

Director, Funds Management Division, Financial Management Service.

[FR Doc. 92–827 Filed 1–13–92; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF VETERANS AFFAIRS

Veterans Advisory Committee on Rehabilitation; Meeting

The Department of Veterans Affairs gives notice that a meeting of the Veterans' Advisory Committee on Rehabilitation, authorized by 38 U.S.C., 1521, will be held on January 27 and 28, 1992, from 9 a.m. to 4 p.m. in the Omar Bradley Conference Room, room 1105, of the Department of Veterans Affairs at 801 I St., NW. Washington, DC. The purpose of the meeting will be to review the administration of veterans' rehabilitation programs and to provide recommendations to the Secretary. The meeting will be open to the public up to the seating capacity of the conference room. Due to limited seating capacity of the conference room, it will be necessary for those wishing to attend to contact Theresa Boyd at (202) 233–6493 prior to January 20, 1992. Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before or within 10 days of the meeting. Oral statements will be heard at 3:30 p.m. on January 27, 1992.

Dated: January 6, 1992.

By Direction of the Secretary.

Diane H. Landis,

Committee Management Officer.

[FR Doc. 92-882 Filed 1-13-92; 8:45 am]

BILLING CODE 8320-01-M

Secretary's Educational Assistance Advisory Committee; Meeting

The Department of Veterans Affairs gives notice that a meeting of the Secretary's Educational Assistance Advisory Committee, authorized by 38 U.S.C. 3692, will be held on February 3, 1992, from 8:30 a.m. to 4 p.m. and on February 4, 1992, from 8:30 a.m. to 12 noon. The meeting will take place in the Cascades Conference Center of the Colonial Williamsburg Woodlands Hotel on Information Drive, Williamsburg, Virginia 23187. The purpose of the meeting will be to discuss VA and military education issues with representatives of the various services of Department of Defense.

The meeting will be open to the public up to the seating capacity of the conference room. Due to the limited seating capacity, it will be necessary for those wishing to attend to contact Mrs. Celia Dollarhide, Executive Secretary, Veterans' Advisory Committee on Education (phone 202-233-2152) prior to January 20, 1992.

Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before or within 10 days after the meeting. Oral statements will be heard at 3 p.m. on February 3, 1992.

Dated: January 2, 1992.

By direction of the Secretary.

Diane H. Landis,

Committee Management Officer.

[FR Doc. 92-883 Filed 1-13-92; 8:45 am]

BILLING CODE 8320-01-M

Availability of Report of 38 U.S.C. 219 Program Evaluation

Notice is hereby given that the evaluation of the Department of Veterans Affairs Post Traumatic Stress Disorder (PTSD) Program has been completed.

Single copies of the Post Traumatic Stress Disorder Program Evaluation report are available.

Reproduction of multiple copies can be arranged at the user's expense.

Direct inquiries to Sid Shaw (009), Office of Assistant Secretary for Congressional Affairs, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420.

Dated: January 7, 1992.

By direction of the Secretary.

Sylvia Chavez Long,

Assistant Secretary for Congressional Affairs.

[FR Doc. 92-884 Filed 1-13-92; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 57, No. 9
Tuesday, January 14, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Board Consideration of Resumption of Operations at the Rocky Flats Plant: Extension of Time to Submit Material for the Record.

ACTION: Time Extension for Public Comments.

SUMMARY: In a notice of public hearing published in the **Federal Register** on January 8, 1992 (57 FR 747), the Board announced that it would hold open the written record of the hearing (to be held in Boulder, Colorado on January 16, 1992) until January 21, 1992. In a companion notice published today, the Board announces that it is holding a public meeting in Washington, DC., on February 3, 1992, on public health and safety issues relating to Building 559 at the Rocky Flats Plant. To allow members of the public additional time to submit information to the Board, the Board will hold open the record of the January 16 hearing until close of business Friday, January 31, 1992.

Dated: January 10, 1992.

Kenneth M. Pusateri,

General Manager.

[FR Doc. 92-1027 Filed 1-10-92; 1:02 pm]

BILLING CODE 6820-KM-M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. § 552b), notice is hereby given of the following meeting of the Board:

TIME AND DATE: 9:00 a.m., Monday, February 3, 1992.

PLACE: Public Hearing Room, Suite 700, 625 Indiana Avenue, NW., Washington, DC 20004.

STATUS: Open.

MATTERS TO BE CONSIDERED: .

1. Public health and safety issues pertaining to Building 559 at the Rocky Flats Plant near Boulder, Colorado.
2. DOE's responses to Board recommendations and whether or not those responses adequately protect public health and safety relative to Building 559.

CONTACT PERSONS FOR MORE INFORMATION: Kenneth M. Pusateri, General Manager, Defense Nuclear Facilities Safety Board, or Carole J. Council, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004, (202) 208-6400 (FTS 268-6400).

SUPPLEMENTARY INFORMATION: The Board will discuss and deliberate upon public health and safety issues related to Building 559 at the Rocky Flats Plant, near Boulder, Colorado. The meeting will include consideration of testimony and documents received at or after the public meeting and hearing conducted in Boulder, Colorado, on January 16, 1992, regarding DOE's operational readiness review for Building 559.

The Board will also discuss, pursuant to the requirements of section 3133 of the National Defense Authorization Act for Fiscal Years 1992 and 1993, whether or not DOE's responses to Board recommendations adequately protect public health and safety relative to Building 559.

The Board reserves its right to further schedule and otherwise regulate the course of the meeting, to recess, reconvene, postpone, or adjourn the meeting, and otherwise exercise its powers as provided by law.

Dated: January 10, 1992.

Kenneth M. Pusateri,

General Manager.

[FR Doc. 92-1028 Filed 1-10-92; 1:02 pm]

BILLING CODE 6820-KD-M

DEPARTMENT OF ENERGY, FEDERAL ENERGY REGULATORY COMMISSION

Notice

(January 8, 1992)

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552b:

DATE AND TIME: January 15, 1992, 10:00 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

*Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208-0400. For a recording listing items stricken from or added to the meeting, call (202) 208-1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro 950th Meeting—January 15, 1992 Regular Meeting (10:00 a.m.)

CAH-1.
Project No. 10981-001, Bangor Hydro-Electric Company
CAH-2.
Project No. 3188-007, Joseph M. Keating.
CAH-3.
Project No. 3194-011, Joseph M. Keating.
CAH-4.
Project No. 7960-002, Wyoming Valley Hydro Partners
CAH-5.
Project No. 10551-005, City of Oswego, New York
CAH-6.
Docket No. 7270-008, Northern Wasco County People's Utility District
CAH-7.
Project No. 4632-012, Clifton Power Corporation
CAH-8.
Project No. 9556-003, Kamargo Corporation
Project No. 9552-003, Deferiet Corporation
Project No. 9554-003, Colton Hydro Corporation
Project No. 9555-003, Higley Corporation
Project No. 9567-003, Hannawa Corporation
CAH-9.
Project No. 9711-002, Inghams Corporation
CAH-10.
Project No. 9712-003, Beardslee Corporation
CAH-11.
Omitted
CAH-12.
Docket Nos. EL85-42-001, 002 and 003, Guy, M. Carlson
CAH-13.
Docket No. EL88-25-001, Iliamna-Newhalen-Nondalton Electric Cooperative, Inc.
CAH-14.
Project No. 8654-016, Noah Corporation
CAH-15.
Project No. 6901-014, City of New Martinsville, West Virginia
CAH-16.
Omitted
CAH-17.
Project No. 11161-001, Hanalei Hydropower, Inc.

Consent Agenda—Electric

CAE-1.
Docket Nos. ER92-199-000 and ER89-106-000, Duke Power Company
CAE-2.

Docket No. ER91-616-000, Empire District Electric Company
CAE-3.
Docket No. ER91-471-000, PacifiCorp Electric Operations
CAE-4.
Docket No. AI92-1-001, Accounting Release No. AR-14
CAE-5.
Docket No. ER91-478-001, Philadelphia Electric Company
CAE-6.
Docket No. ER90-39-002, Central Louisiana Electric Company, Inc.
Docket No. EL91-3-000, Louisiana Energy and Power Authority v. Central Louisiana Electric Company, Inc.
CAE-7.
Docket Nos. ER90-245-003 (Phase I) and EL91-39-001, Canal Electric Company
CAE-8.
Docket No. AC92-26-000, Eastern Edison Company
CAE-9.
Docket No. ER89-475-000, Pacific Gas and Electric Company

Consent Agenda—Oil and Gas

CAG-1.
Docket No. RP92-65-000, CNG Transmission Corporation
CAG-2.
Docket No. RP92-61-000, Stingray Pipeline Company
CAG-3.
Docket No. RP92-62-000, Trailblazer Pipeline Company
CAG-4.
Docket No. Omitted
CAG-5.
Docket No. TM92-2-2-000, East Tennessee Natural Gas Company
CAG-6.
Docket No. TM92-4-22-000, CNG Transmission Corporation
CAG-7.
Docket No. TM92-2-37-000, Northwest Pipeline Corporation
CAG-8.
Docket Nos. TA91-1-31-004 AND 005, Arkla Energy Resources, a division of Arkla, Inc.
CAG-9.
Docket Nos. TA90-1-29-002, 004, 005 and TA91-1-29-000, Transcontinental Gas Pipe Line Corporation
CAG-10.
Docket No. CP89-1281-016, Natural Gas Pipeline Company of America
CAG-11.
Docket Nos. TA91-1-41-002 and RP88-227-028, Paiute Pipeline Company
CAG-12.
Docket No. TA91-1-30-000, Trunkline Gas Company
CAG-13.
Docket Nos. RP89-186-009, RP90-20-007, and RP91-143-008, Great Lakes Gas Transmission Limited Partnership
CAG-14.
Docket No. RP91-212-002, Stingray Pipeline Company
CAG-15.
Omitted
CAG-16.
Docket Nos. RP92-3-001, and RP90-108-000, *et al.* Columbia Gas Transmission Corporation Docket Nos. RP92-2-001, RP90-107-000, *et al.* and RP91-161-003, Columbia Gulf Transmission Company
CAG-17.
Docket No. RP91-210-003, Tennessee Gas Pipeline Company
CAG-18.
Docket No. RP90-209-001, Texas Eastern Transmission Corporation
CAG-19.
Docket No. TQ91-7-24-002, Equitrans, Inc.
CAG-20.
Docket No. TQ92-3-59-002, Northern Natural Gas Company
CAG-21.
Docket Nos. TA91-1-29-001, and TA90-1-29-003, Transcontinental Gas Pipe Line Corporation
CAG-22.
Docket Nos. TA90-1-22-011, and RP90-141-002, CNG Transmission Corporation
Docket No. CP92-62-001, CNG Transmission Corporation and Texas Eastern Transmission Corporation
CAG-23.
Docket No. FA91-50-002, Natural Gas Pipeline Company of America
CAG-24.
Docket Nos. RP91-107-000, TM91-6-43-000, and RP91-185-000, Williams Natural Gas Company
CAG-25.
Docket No. RP92-54-000, North Penn Gas Company
CAG-26.
Omitted
CAG-27.
Omitted
CAG-28.
Docket No. PR91-6-000, KansOK Partnership
CAG-29.
Docket Nos. RP90-8-006 and 007, Transcontinental Gas Pipe Line Corporation
CAG-30.
Docket No. GP92-3-000, The Utah Department of Natural Gas Resources, Utah-5 Amendment—Dakota Formation, Grand County, Utah, FERC No. JD91-08284T
CAG-31.
Docket No. CI91-85-001, Commonwealth Gas Company
Docket No. CI91-94-001, New York State Electric & Gas Corporation
Docket No. CI91-97-001, Niagara Mohawk Power Corporation
Docket No. CI91-104-001, New Jersey Natural Gas Company
Docket No. CI92-1-001, Washington Natural Gas Company
Docket No. CI89-461-001, Quantum Chemical Corporation
Docket No. CI91-88-001, Doswell Limited Partnership
Docket No. CI91-93-001, Lockport Energy Associates
Docket No. CI91-101-001, North Jersey Energy Associates
Docket No. CI91-102-001, Northeast Energy Associates
Docket No. CI91-103-001, Ocean State Power II
Docket No. CI91-106-001, Honda of America Mfg., Inc.
Docket No. CI91-126-001, Manville Corporation, *et al.*
Docket No. CI91-128-001, Cogen Energy Technology, L.P.
CAG-32.
Docket No. CP90-14-002, Transwestern Pipeline Company
CAG-33.
Omitted
CAG-34.
Omitted
CAG-35.
Docket No. CP91-1314-001, Amerada Hess Corporation
Docket No. CP91-1117-001, Tom Brown, Inc.
CAG-36.
Docket No. CP92-187-000, Northwest Pipeline Corporation
CAG-37.
Docket No. CP92-178-000, Northern Natural Gas Company
CAG-38.
Omitted
CAG-39.
Docket No. CP91-501-000, Sabine Pipeline Company
CAG-40.
Docket No. CP89-1-008, Mojave Pipeline Company
CAG-41.
Docket No. CP89-2048-006, Kern River Gas Transmission Company
CAG-42.
Docket No. CP91-1616-000, ANR Pipeline Company
Docket No. CP91-1634-000, Great Lakes Gas Transmission Limited Partnership
CAG-43.
Docket Nos. CP91-967-000 and 002, Natural Gas Company
Docket No. CP91-1071-000, Natural Gas Pipeline Company of America
CAG-44.
Docket Nos. CP91-2322-000, 002, and CP90-767-000, Paiute Pipeline Company
CAG-45.
Docket No. CP91-780-002, Northwest Pipeline Corporation
CAG-46.
Docket No. CP92-217-000, Texas-Ohio Pipeline, Inc.
CAG-47.
Docket No. CP87-536-001, High Plains Natural Gas Company
CAG-48.
Docket No. CP91-2277-000, Arkla Energy Resources, a division of Arkla, Inc.
CAG-49.
Docket No. CP90-1603-000, Northern Natural Gas Company
CAG-50.
Docket No. CP91-2950-000, Northwest Pipeline Corporation
CAG-51.
Docket Nos. CP91-1580-000 and 001, Algonquin Gas Transmission Company and Texas Eastern Transmission Corporation
CAG-52.
Docket No. CP91-2366-000, Mississippi River Transmission Corporation
CAG-53.
Docket No. CP90-1478-000, Northwestern Border Pipeline Company

CAG–54.
Docket No. RP92–64–000, Natural Gas Pipeline Company of America
CAG–55.
Docket No. CP84–252–005, Trans-Appalachian Pipeline, Inc.

Hydro Agenda

H–1.
Project No. 2709–012, Monogahela Power Company, The Potomac Edison Company and West Penn Power Company Order on annual charges.

Electric Agenda

E–1.
Reserved

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
(A) Docket No. MG88–02–004, Algonquin Gas Transmission Company
Docket No. MG88–44–003, ANR Pipeline Company
Docket Nos. MG88–20–003 and 004, Arkla Energy Resources, a Division of Arkla, Inc.
Docket No. MG90–06–002, Canyon Creek Compression Company
Docket No. MG89–04–004 and 005, Carnegie Natural Gas Company
Docket No. MG88–53–003, CNG Transmission Corporation
Docket No. MG88–45–003, Colorado Interstate Gas Company
Docket No. MG88–03–004, Florida Gas Transmission
Docket No. MG90–04–002, Midwestern Gas Transmission
Docket Nos. MG88–12–003 and 005, Mississippi River Transmission Corporation
Docket No. MG89–14–002, Moraine Pipeline Company
Docket No. MG88–31–003, Natural Gas Pipeline Company of America
Docket No. MG88–35–004, Northern Border Pipeline Company
Docket No. MG88–07–004, Northern Natural Gas Company
Docket No. MG88–55–004, Panhandle Eastern Pipeline Company
Docket No. MG88–15–003, Southern Natural Gas Company
Docket No. MG91–02–002, Southwest Gas Storage Company
Docket No. MG90–08–002, Stingray Pipeline Company
Docket No. MG88–19–004, Tennessee Gas Pipeline Company
Docket No. MG88–26–004, Texas Eastern Transmission Corporation
Docket No. MG88–47–003, Texas Gas Transmission Corporation
Docket No. MG90–07–002, Trailblazer Pipeline Company
Docket No. MG88–09–004, Transwestern Pipeline Company
Docket No. MG88–54–003, Trunkline Gas Company
Docket No. MG90–03–002, Trunkline LNG Company
Docket No. MG88–05–004, United Gas Pipe Line Company
Docket No. MG88–50–003, Williams Natural Gas Company. Order on rehearing and clarification concerning Order No. 497 filings.
(B) Docket No. MG88–02–003, Algonquin Gas Transmission Company
Docket No. MG90–06–001, Canyon Creek Compression Company
Docket No. MG88–53–002, CNG Transmission Corporation
Docket No. MG89–11–002, Columbia Gas Transmission Company
Docket No. MG89–10–001, Columbia Gulf Transmission Company
Docket No. MG91–04–000, East Tennessee Natural Gas Company
Docket No. MG89–13–002, Green Canyon Pipe Line Company
Docket No. MG91–01–001, National Fuel Gas Supply Corporation
Docket No. MG90–02–001, Ohio River Pipeline Company
Docket No. MG88–55–003, Panhandle Eastern Pipeline Company
Docket No. MG88–11–001, Questar Pipeline Company
Docket No. MG88–06–002, Sea Robin Pipeline Company
Docket No. MG91–02–001, Southwest Gas Storage Company
Docket No. MG90–08–001, Stringray Pipeline Company
Docket No. MG88–19–003, Tennessee Gas Pipeline Company
Docket No. MG88–26–003, Texas Eastern Transmission Corporation
Docket No. MG90–07–001, Trailblazer Pipeline Company
Docket Nos. MG88–51–001 and 002, Transcontinental Gas Pipe Line Corporation
Docket No. MG88–54–002, Trunkline Gas Company
Docket No. MG90–03–001, Trunkline LNG Company
Docket No. MG88–05–003, United Gas Pipeline Company
Docket No. MG88–13–004, Valero Interstate Transmission Company
Docket No. MG90–11–002, Viking Gas Transmission Company. Order concerning Order No. 497 filings
(C) Docket No. MG88–18–003, Blue Dolphin Pipeline Company
Docket No. MG89–16–001, Caprock Pipeline Company
Docket No. MG88–04–003, Mid Louisiana Gas Company
Docket No. MG88–08–003, MIGC, Inc.
Docket No. MG88–23–001, Superior Offshore Pipeline Company
Docket No. MG88–24–002, Texas Sea Rim Pipeline, Inc.
Docket No. MG88–33–003, Valley Gas Transmission Company. Order concerning Order No. 497 filings
(D) Docket No. MG92–1–000, Iroquois Gas Transmission System, L.P. Order on Standards of Conduct filings under Order Nos. 497 and 497–A.
(E) Docket No. MG92–2–000, Michigan Gas Storage Company Order on Standards of Conduct filings under Order Nos. 497 and 497–A.
(F) Docket No. MG90–4–001, Midwestern Gas Transmission. Order on Standards of Conduct filings under Order Nos. 497 and 497–A.
(G) Docket No. MG91–5–000, Overthrust Pipeline Company. Order on Standards of Conduct filings under Order Nos. 497 and 497–A.
(H) Docket No. MG88–56–001, Ringwood Gathering Company. Order on Standards of Conduct filings under Order Nos. 497 and 497–A.
(I) Docket No. MG89–18–003, Seagull Interstate Corporation. Order on Standards of Conduct filings under Order Nos. 497 and 497–A.
(J) Docket No. MG88–47–002, Texas Gas Transmission Company. Order on Standards of Conduct filings under Order Nos. 497 and 497–A.
(K) Docket No. MG91–06–000, Wyoming Interstate Company, Ltd. Order on Standards of Conduct filings under Order Nos. 497 and 497–A.
PR–2.
Docket Nos. RP91–41–001, 002, RP91–90–000 and 001, Columbia Gas Transmission Corporation. Order on rehearing.
PR–3.
Docket Nos. TQ89–1–46–033, RP86–165–013, 017 and CP90–1984–000, Kentucky West Virginia Gas Company
Docket No. CP90–1985–000, Columbia Gas Transmission Corporation. Order on rehearing

II. Producer Matters

PF–1.
Reserved

III. Pipeline Certificate Matters

PC–1.
Reserved

Lois D. Cashell,

Secretary.

[FR Doc. 92–990 Filed 1–9–92; 4:46 pm]

BILLING CODE 6717–01–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration; Amendment to Sunshine Meeting

SUMMARY: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on January 7, 1992 (57 FR 582) of the regular meeting of the Farm Credit Administration Board (Board) scheduled for January 9, 1992. This notice is to amend the agenda for that meeting to remove an item from the open session.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of the meeting of the Board were open to the public (limited space available), and parts of the meeting were closed to the public. The agenda for January 9, 1992, is amended to remove the following item from the open session:

Open Session

B. Regulations:

1 Expansion of Privacy Act Exemptions to Inspector General Investigatory Files—Amendment of 12 CFR 603.355 (Proposed).

Dated: January 9, 1992.

Curtis M. Anderson,

Secretary Farm Credit Administration Board.

[FR Doc. 92–1047 Filed 1–10–92; 1:03 pm]

BILLING CODE 6705–01–M

Corrections

Federal Register
Vol. 57, No. 9
Tuesday, January 14, 1992

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

10 CFR Part 820

[Docket No. NS-RM-91-820]

Procedural Rules for DOE Nuclear Activities

Correction

In proposed rule document 91-28832 beginning on page 64290, in the issue of Monday, December 9, 1991, make the following corrections:

1. On page 64290, in the first column, under **DATES**, in the third line "February 3" should read "February 7".

2. On page 64300, in the first column, the heading **V. Public Comments Procedures** should read **VI. Public Comments Procedures.**

3. On the same page, in the same column, in the first full paragraph, 11 lines from the bottom "February 3" should read "February 7".

BILLING CODE 1505-01-D

POSTAL SERVICE

39 CFR Part 111

ZIP + 4 and ZIP + 4 Barcoded Rate Presort Requirements

Correction

In rule document 91-27093 beginning on page 57724 in the issue of Wednesday, November 13, 1991, insert on page 57771 the file line at the end of the document to read "FR Doc. 91–27093".

BILLING CODE 1505-01-D

federal register

Tuesday
January 14, 1992

Part II

Department of Housing and Urban Development

Office of the Secretary

24 CFR Subtitle A

HOPE for Public and Indian Housing Homeownership Program; Final Rule and Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Subtitle A

[Docket No. N-92-3199; FR-2966-N-03]

HOPE for Public and Indian Housing Homeownership Program; Program Guidelines

AGENCY: Office of the Secretary, HUD.

ACTION: Program guidelines.

SUMMARY: This document revises HUD's guidelines published on February 4, 1991 (56 FR 4412) that govern the operation of the HOPE for Public and Indian Housing Homeownership program (HOPE 1) that provide for homeownership by low-income families. The amendments take effect immediately. Elsewhere in today's issue of the **Federal Register**, HUD is publishing a Notice of Fund Availability for the HOPE 1 grant program, and NOFAS for, and notices to amend, the other two HOPE grant programs:

HOPE for Homeownership of Multifamily Units (HOPE 2); and

HOPE for Homeownership of Single Family Homes (HOPE 3). The HOPE Grant programs are authorized by title IV of the National Affordable Housing Act (NAHA) (Pub. L. 101-625, enacted November 28, 1990). HOPE is an acronym for Homeownership and Opportunity for People Everywhere.

The purpose of the HOPE Grant program is to provide homeownership opportunities for low-income families and individuals. Important to the success of the HOPE 1 program will be the development of resident-based organizations that will have central responsibilities for the program.

The authorizing legislation provides for implementation by publication of a notice for immediate effect. Comments on the notice published on February 4, 1991 were due September 30. HUD invites further public comment on these program guidelines, including the amendments to the guidelines, and will consider the comments, together with comments received by September 30, in developing the final rule for the program. As required by the statute, HUD will publish the final rule within eight months from today.

DATES: Effective date: January 14, 1992.

Comment due date: April 15, 1992.

The amendments to these Guidelines contain no additional information collection requirements.

ADDRESSES: Interested persons are invited to submit comments regarding these guidelines to the Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.-5:30 p.m. Eastern Time) at the above address.

FOR FURTHER INFORMATION CONTACT: Gary Van Buskirk, Homeownership Division for Public and Indian Housing, 202-708-4233. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1-800-877-TDDY, 1-800-877-8339, or 202-708-9300. Department of Housing and Urban Development, room 4112, 451 Seventh Street SW., Washington, DC 20410. (Telephone numbers, other than "800" TDD numbers, are not toll-free.)

SUPPLEMENTARY INFORMATION: The information collection requirements contained in these amended guidelines have been approached through April 30, 1992, by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), and assigned OMB control number 2577-0132. Information on the estimated public reporting burden is provided in this document under the heading "Other Matters." Comments regarding burden estimates or any other aspects of the collection requirements should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3001, Washington, DC 20503, Attention: Jenny Main, Desk Officer for HUD.

Summary of Amendments to HOPE 1 Guidelines

In addition to various classifications, technical corrections, and a few reorganizations, HUD has made the following significant changes to the guidelines published on February 4, 1991. Potential applicants should read the entire document thoroughly.

Part I. Purpose; Summary; and Relationship to Other Programs

In section 110(a), Waiver of section 8 Regulations, the paragraph describing anticipated amendments to 24 CFR part 791 has been deleted, since the amendments to part 791 were published at 56 FR 9828 on March 7, 1991. Part 791 governs the allocation of housing assistance and, as amended, permits HUD to set aside section 8 authority for use in connection with the HOPE programs.

Part II. Definitions

The definition of Applicant has been clarified by noting that a cooperative association may be an eligible applicant only for property it proposes to acquire and transfer to eligible families.

The definition of Eligible Property has been clarified to give townhouses and adjacent detached houses as examples of contiguous single family public and Indian housing properties that are eligible under HOPE 1. Scattered-site single family properties are eligible under HOPE 3.

The definition of Census Region has been deleted since the term is no longer used. HUD has decided to assure compliance with the requirement for geographic diversity by assuring a certain level of funding in each of the 10 HUD Regions, rather than in each of the four Census Regions.

The definition of Ownership Interest has been amended by noting that mutual housing is eligible only to the extent it provides for the transfer of ownership interests to eligible families. Some forms of mutual housing do not give occupants ownerships rights, such as an equity stake in the property or the right to sell the property (or shares representing the property, as in cooperatives).

The definition of Private Nonprofit Organization has been amended to require that it be a tax exempt entity under section 501(c) of the Internal Revenue Code of 1986. RMCs and RCs must be nonprofit organizations, but need not meet the definition of private nonprofit organizations, and, therefore, need not be tax exempt under section 501(c). This will avoid imposing an undue administrative burden on resident entities.

III. Planning Grants

Under section 301(a), General Authority, HUD will comply with the requirement for national geographical diversity by selecting at least two mini and two full planning grants for each of the 10 HUD Regions (assuming sufficient approval applications), rather than the four Census regions. HUD has determined that sufficient funding has been appropriated to permit wider geographic diversity than provided in the earlier notice. See, also, section 315(b), Ranking and Selection To Assure National Geographic Diversity, which has been conformed. Section 301(a) has also been amended to provide that, where both an RMC and an RC submit applications for the same eligible property, HUD shall consider only the application from the RMC.

Under section 301(b)(2), HUD is providing a "safe harbor" where an applicant requests a planning grant of more than $200,000 ($100,000 for a mini planning grant). No additional demonstration of good cause is required for applications representing more than 250 units which request more than the dollar cap, if the additional amount requested is not more than $800 for each unit over 250 for a planning grant or not more than $400 for each unit over 250 for a mini planning grant. If the applicant submits an application exceeding these unit caps, the application must contain a justification demonstrating that the costs are reasonable.

Section 305, Eligible Planning Grant Activities, has been clarified to provide that only costs incurred on or after the effective date of the grant agreement for the planning grant qualify for funding under the program.

Section 305(a) has been modified to correct an oversight. Funding for the development of RMCs or RCs may not duplicate funding under section 20(f) of the 1937 Act. This was policy was previously included for implementation grants, and intended for planning grants.

Section 305(g) Security Plans, has been amended to give examples of activities that are eligible under the heading "Security Plans." This activity may cover assessing the need for the hiring of security personnel and creating tenant patrols, for negotiating agreements with local law enforcement agencies, and for providing security systems.

Section 310(a), NOFA, has been amended by moving the provision that states that applicants may request information and guidance from HUD about program requirements and preparation of the application to the appropriate place in the guidelines. This sentence was mistakenly placed under "Screening" in the February 4 guidelines. The same correction has also been made to section 415(a).

Under section 310(b)(1)(iii), applicants are required to propose establishment of a resident entity promptly after the effective date of the grant agreement, if no such entity already exists. Resident involvement is crucial to the success of a HOPE homeownership program. This important improvement will assure that applicants will actively enlist participation by the residents in the development and execution of homeownership program under the HOPE program.

Section 310(b)(2)(i) has been amended to permit an application from a private nonprofit organization that has applied for tax exempt status under section 501(c) of the Internal Revenue Code of 1986 on or before the date of application to be considered, so long as it receives approval before the effective date of the grant agreement. This will give applicants additional time to obtain tax exempt status.

Section 310(b)(4)(i) has been clarified to state that an authorized representative of the public official who submits the CHAS may make the certification that the application is consistent with the CHAS.

Section 310(b)(4)(ii) has been amended to delete the requirement that an IHA demonstrate in its application that its proposed homeownership program is consistent with the tribal plan. (Indian tribes and IHAs are not subject to the requirement that the application contain a certification of consistency with the CHAS.) This amendment will simplify the program for entities that lack the capacity to carry out detailed planning.

Section 310(b)(6), Resident Interest, has been amended to add a requirement that the application contain a board resolution from the RMC or RC supporting an application from an RMC or RC, to ensure the organization as a whole supports the application.

It has also been amended to provide that where an RMC or RC exists for the eligible property, the application contain a board resolution from the RMC, or (if there is no RMC) the RC for the eligible property, that it is interested and that the applicant is submitting the application on behalf of that RMC or RC. This requirement applies regardless of whether the applicant is an RMC or RC for the area (but not the particular property) or is an entity that is not an RMC or RC. The previous guidelines did not cover the situation where, for example, a city-wide RMC or RC applied for a project that has its own RMC or RC.

Finally, this section has been amended to require that where an RMC or RC does not exist for the eligible property, the application include a survey showing that (a) if the development is less than 50 percent vacant, at least 50 percent of the households of the eligible property are interested in exploring the possibility of homeownership; or (b) if the development is 50 percent or more vacant, there are at least 1.2 interested eligible families for each unit in the property that is not occupied by a family interest in homeownership (either because it is vacant or the resident is not interested).

A new section 310(b)(7), Nonduplication of Funding, has been added to require the application to contain a certification that the applicant has not and will not receive assistance from the Federal government, a State, or a unit of general local government, or any agency or instrumentality thereof, for activities for which funding is requested in the application.

Section 310(c), Screening, has been clarified. In addition, the scope of the screening has been modified to specify that applications that fail to comply with any program requirements will receive no further processing. See, also, section 415(c), for conforming changes for implementation grants.

The rating points in section 305(a) have been modified to give more weight to the important categories of "capability" and "efficiency."

Section 315(a)(1), the rating factor entitled Capability, has been amended. A new subcriterion (iii) gives up to 5 points to applicants based on their direct experience in representing residents of public or Indian housing developments. Clauses (A) and (C) under subcriterion (iv) have been deleted and the maximum points reduced to 5. Subcriterion (v), a demonstration by the applicant or a joint applicant that it is an RMC or RC, has been moved from criterion (2)(iii). The total points for criterion 1 have been increased to 35.

Section 315(a)(2), the rating factor entitled Resident and Homebuyer Interest and Marketability, has been revised in several ways. This factor now consists of three alternate subcriteria. The first two now apply where the applicant is not an RMC or RC. Subcriterion (ii) has been amended to assign points based on the number of interested families interested in participating, not just families in other developments of the PHA/IHA. HUD has determined that assigning points based only on the interest of families in other PHA/IHA developments is too limited, given the pool of potentially eligible families. A new subcriterion (iii) has been added covering situations where the applicant is an RMC. If a majority of the governing board favors homeownership, the applicant receives 5 points. If two-thirds of the board is in favor, the applicant receives 10 points. The maximum points for criterion (2) have been reduced from 20 to 10.

Section 315(a)(3), the rating criterion entitled Suitability of the Property, has been amended to assign maximum points to each of the subcriteria to assure each one approximately equal weight. In the case of neighborhoods with undesirable conditions, the applicant may receive maximum points if the conditions "can be" mitigated. The earlier guidelines required that

mitigation already be underway. This requirement was unrealistic and could have resulted in disapproval of otherwise excellent homeownership opportunities.

Section 315(a)(5), the rating criterion entitled Efficiency, has been clarified to note that points will be awarded to an applicant based on its cost in relation to other applications in the competition.

Section 315(b)(1) has been amended to assure funding of at least one mini planning grant and one full planning grant involving an Indian housing development.

A new section 315(b)(5) has been added governing what happens if HUD discovers procedural errors at various stages of review and selection. See, also, section 425(c)(5) for implementation grants.

Section 315(d), Reduction in Requested Grant Amounts, has been amended to clarify that HUD may not only approve an application for an amount lower than requested but may also adjust line items in the proposed budget within the amount requested.

Part IV. Implementation Grants

Section 401(a) has been amended to provide that, where both an RMC and an RC submit applications for the same eligible property, HUD shall consider only the application from the RMC.

Section 401(b), National Competition, has been amended to require that HUD select at least one application from each of the 10 HUD Regions, instead of from each of the four Census regions. HUD has determined that sufficient funds were appropriated to fund at least one application in each HUD Region to achieve national geographic diversity and still permit selection based on a national competition for the remaining funds. In addition, if none of the 10 involves an Indian housing development and sufficient funds remain, the highest ranking application anywhere in the country involving Indian housing shall also be approved. See, also, a related conforming change to section 425(c).

Consistent with the planning grant amendment, section 405(a), Limitations, has been amended to provide that only costs incurred on or after the effective date of the grant agreement qualify for funding under the program.

Section 410(b)(1)(i) has been clarified to provide that cash contributions must be contributed permanently for uses under the program to count towards the match.

Section 410(b)(1) (iv) and (vi) have been added to clarify computation of the match. Clause (iv) provides that cash contributions may be made by the applicant, non-Federal public entities, private entities, and individuals, including program income from a Federal grant earned after the end of the award period if no Federal requirements govern their disposition (including UDAG and HoDAG repayments). Clause (vi) provides that the grant equivalent of a below-market interest rate loan to the homebuyer, where all repayments, interest, and other return will not be permanently contributed to the HOPE program, may be counted as a cash contribution, in accordance with specified standards. These provisions were taken from the HOME rule governing match requirements for that program.

Section 410(b)(1)(v) provides that cash contributions may also be made towards the match from sale proceeds from the Turnkey III Homeownership and Mutual Help programs obtained pursuant to PIH Notice 91–28 and approved homeownership programs under section 5(h) of the 1937 Act. Section 410(b)(1)(vii) clarifies that a down payment by an eligible family may not count towards the match (since it is counted towards a family's equity and, therefore, cannot be considered a permanent contribution to the program). Finally, section 410(b)(1)(viii) permits amounts that an applicant has requested in an application submitted to the Federal Housing Finance Board for assistance under its Affordable Housing Program to count towards the match, so long as FHFB approves the application before the date HUD approves the HOPE application.

Section 410(b)(5), Infrastructure, has been amended to provide that an infrastructure investment may be counted towards the match only if it was completed on or after the date that is 12 months before the date of the HUD notification to the applicant of implementation grant approval and completed no later than five years from the effective date of the grant agreement. This makes the HOPE program substantially consistent with the HOME program. The February 4 guidelines permitted counting infrastructure expenditure only if they were made after the date of HUD approval of the application and set no deadline for completion.

Section 410(b)(7)(ii), under Other In-Kind Contributions, has been amended to increase the valuation of donated labor, including sweat equity, from $5 an hour to $10 an hour, consistent with recent changes to HUD's Shelter Plus Care program. In addition section 410(b)(7)(ii) has been clarified to provide that sweat equity may be counted towards the match only if it is not also counted towards a family's equity.

Section 410(b)(7)(iii) has been added to provide guidance in the case of donated materials and supplies.

Section 415(b)(3)(ii) has been clarified. The February 4 guidelines permitted an RMC or RC to arrange for management by a qualified management entity, but did not explain what was meant. The amended guidelines specified that an RMC or RC may arrange for the management of the program by a qualified entity which has effectively and efficiently managed housing for at least three years.

Section 415(b)(3)(iii) is new. It permits an application from a private nonprofit organization that has applied for tax exempt status under section 501(c) of the Internal Revenue Code of 1986 on or before the date of application to be considered, so long as it receives approval before the effective date of the grant agreement.

Under section 415(b)(4), Description of Proposed Homeownership Program, applicants are required to propose establishment of a resident entity promptly after the effective date of the grant agreement, if no such entity already exists. Resident involvement is crucial to the success of a HOPE homeownership program. This important improvement will assure that applicants will actively enlist participation by the residents in the development and execution of homeownership programs under the HOPE program.

Section 415(b)(8)(i)(C) contains an amendment to the replacement plan requirements. HUD has reconsidered its earlier view that, since one-for-one replacement is required for each public or Indian housing unit converted to homeownership under the HOPE 1 program, each application containing a feasible replacement housing plan could be presumed to comply with the requirement that the program not appreciably reduce the number of public and Indian housing rental units available in the locality. In accordance with section 303(e)(8) of the 1937 Act, a new selection criterion has been added to section 425(b)(9). Under the new criterion, points will be deducted from an applicant's score, depending on the extent, if any, it would result in the appreciable reduction of public or Indian Housing in the locality. The provision related to this subject in the threshold review has been deleted (see former section 420(b)).

Section 415(b)(9)(ii) has been added to provide that, where the match does not apply to an IHA in accordance with section 410(d), the application shall contain a certification that the IHA has not received, and will not receive,

amounts under title I of the Housing and Community Development Act of 1974 for the fiscal year in which HUD obligates the HOPE grant funds.

Section 415(b)(10), Economic Development, has been amended to require an application to contain a plan for economic development activities if the applicant also requests assistance for operating expenses. Where post-sale operating assistance is needed, HUD has determined that economic development activities should always be required to assure successful phasing out of operating assistance.

Section 415(b)(12)(i)(B) has been amended to require the application to demonstrate that the monthly expenditure for principal, interest, taxes, insurance, estimated utilities, and other monthly housing costs by an eligible family, that is necessary to complete the sale for the initial acquisition of a unit be no less than 25 percent of adjusted family income. The initial guidelines only included the 35 percent ceiling, and HUD has determined that families should be required to pay a certain minimum amount to avoid possible abuse.

Section 415(b)(16), Management Entity, has been amended to require that the application contain a copy of the proposed management contract only if the PHA or IHA will transfer the property within six months from the effective date of the grant agreement. Where transfer will be delayed longer than six months, it is not reasonable to require a copy of a contract.

Section 415(b)(17)(i) has been clarified to state that an authorized representative of the public official who submits the CHAS may make the certification that the application is consistent with the CHAS.

Section 415(b)(17)(ii) has been amended to delete the requirement that an IHA demonstrate that its proposed homeownership program is consistent with the tribal plan. This amendment will simplify the program for entities that lack the administrative resources to carry out detailed planning.

Section 415(b)(19), Resident Interest, has been expanded. If an RMC or RC is an applicant, the application must contain a board resolution from the RMC or RC, to ensure the organization as a whole supports the application.

It has also been amended to provide that where an RMC or RC exists for the eligible property, the application contain a board resolution from the RMC, or (if there is no RMC) the RC, for the eligible property that it is interested and that the applicant is submitting the application on behalf of that RMC or RC. This requirement applies regardless of whether the applicant is an RMC or RC for the area (but not the particular property) or is an entity that is not an RMC or RC. The previous guidelines did not cover the situation where, for example, a city-wide RMC or RC applied for a project that has its own RMC or RC.

Finally, if the development is less than 50 percent vacant, at least 50 percent of the households of the eligible property must indicate that they are interested in exploring the possibility of homeownership. If the development is 50 percent or more vacant, the survey must indicate that there are at least 1.2 interested eligible families for each unit in the proposed property that is not occupied by a family interested in homeownership.

A new section 415(b)(23), Nonduplication of Funding, has been added to require the application to contain a certification that the applicant has not and will not receive assistance from the Federal government, a State, or a unit of general local government, or any agency or instrumentality thereof, for activities for which funding is requested in the application.

Section 415(c), Screening, has been clarified. In addition, the scope of the screening has been modified to specify that applications that fail to comply with any program requirements will receive no further processing.

The rating points in section 425(a) have been modified to give more weight to the important categories of "capability" and "quality and feasibility of program."

Section 425(a)(1), the rating criterion entitled Capability, has been amended by moving subcriterion (v) (a demonstration that the applicant or joint applicant is an RMC or RC) from criterion (3), and adjusting the points accordingly.

Section 425(a)(3), the rating criterion entitled Resident and Homebuyer Interest and Marketability, has been amended to require more interest in the program under subcriteria (i) and (ii) in order to receive points. In addition, subcriterion (ii) has been amended to base points on the number of interested families interested in participating based on a survey. HUD has determined that assigning points based only on the interest of families in other PHA/IHA developments is too limited, given the pool of potentially eligible families.

Section 425(a)(5), the rating criterion entitled Relationship to CHAS, has been amended to adjust the score for applications submitted by an Indian tribe or IHA, since consistency with neither a CHAS nor a tribal plan is required.

Section 425(a)(7), the rating criterion entitled Suitability of the Property, has been amended to specify maximum points that may be assigned for each of the subcriteria, to give each one approximately equal weight.

Section 425(a)(8), the rating criterion entitled MBE/WBE Goals, has been modified to provide that, in determining the extent to which an applicant demonstrates a firm commitment to promoting the use of minority business enterprises or women-owned businesses, HUD will especially consider resident-owned businesses.

Section 425(a)(9), the rating criterion entitled Appreciable Reduction of Public or Indian Housing in the Locality, has been added, as discussed above.

Section 425(b), Environmental Review, has been amended to permit HUD to adjust rating scores based on its environmental review when it determines environmental impact mitigation would result in excessive costs. The previous guidelines permitted adjustment only in cases of time delays.

Section 425(d), Reduction in Requested Grant Amounts, has been amended to clarify that HUD may not only approve an application for an amount lower than requested but may also adjust line items in the proposed budget within the amounts requested. The references to section 102(d) of the HUD Reform Act have been deleted since implementing regulations under 24 CFR part 12, subpart D, have not yet become effective.

Part V. Other Requirements

Section 505(c)(2) as published on February 4 stated that only Indian tribes and IHAs that exercise their powers of self-government were subject to the requirements of the Indian Self-Determination and Education Assistance Act. This is incorrect; the section has been corrected by deleting the incorrect modifier ("as described in section 505(a)(2)").

Section 505(d), Minority and Women's Business Enterprises, has been amended to clarify that, in the case of applications submitted by Indian tribes or IHAs, compliance with various requirements concerning minority and women's business enterprises must be consistent with, but not in derogation of, the Indian Self-Determination and Education Assistance Act.

Section 530, Conflict of Interest, has been modified to provide that a resident of an eligible property may acquire a homeownership interest even if he or she would otherwise be excluded by paragraph (a). This will avoid the need

for processing applications for exceptions to paragraph (a).

Section 545 is new. Where the applicant is, or proposes to contract with, a primarily religious organization or a wholly secular organization established by a primarily religious organization, the organization shall undertake its responsibilities with respect to the homeownership program in accordance with three specified principles.

Part VI. Grant Agreement—Planning and Implementation Grants

Section 601(c) has been clarified to state that HUD may take any appropriate action authorized under the grant agreement if HUD determines the recipient is failing to carry out the program as required. The authority for HUD to take action where it determines a recipient "is likely to fail" has been deleted. On reconsideration, HUD has determined sanctions should be imposed only where a recipient is actually failing to comply with program requirements, not where HUD believes it probably will fail.

Part VII. Implementation of Planning and Implementation Grants

Section 701(d) has been deleted, since it is not appropriate for HUD to provide tax advice to program recipients.

Section 720, Restrictions on Resale by Initial Homeowners, has been reorganized. The provisions limiting the equity interest that an initial homeowner may retain from sale during the first six years of homeownership has been moved to subsection (c) from paragraph (b)(1)(ii)(B). The guidelines published February 4, 1991 were structured in a way that suggested that the resale restrictions during the first six years applied only where the family acquired the property for less than fair market value. HUD does not believe this was the intent of Congress and has reorganized the section accordingly to remove the ambiguity.

Paragraph (a)(2), Right to Purchase, has been amended to set deadlines for RMCs, RCs, and cooperatives that decide to purchase units from homeowners. Such entities would have 10 days after receiving notice of a firm contract between a homeowner and a prospective buyer to decide whether to exercise its prior right to purchase and 60 additional days to complete closing of the purchase. Where a PHA/IHA or the recipient has a prior right, it would be subject to the same deadlines.

Paragraph (b)(1)(i) has been clarified regarding how the amount of a promissory note, where required, is determined.

In addition, paragraph (c) has been amended. HUD has determined that the inflation adjustment made to the equity a homeowner has in the property should apply to equity that is the result of sweat equity. Accordingly, the guidelines have been amended to provide that the contribution to equity paid by a family may be provided in the form of cash or the value of sweat equity. In addition, the guidelines now provide that the value of any improvements made by the family during the time it owns the home includes improvements made through sweat equity. Sweat equity was previously excluded for purposes of computing inflation adjustments to a family's equity. Finally, a new paragraph (c)(3) has been added to clarify that amounts that count towards a family's equity may not also count towards the match.

Part IX. Waiver Authority

Section 901 has been amended to delete the provision that HUD will not waive deadlines for receipt of applications. The policy has not changed, but the guidelines are not the appropriate place for the limit on HUD's waiver authority since the deadline is in the NOFA. The NOFA states this policy.

X. Other Matters

Information Collections

The information collection requirements contained in these amended guidelines have been approved through April 30, 1992 by the Office of Management and Budget and assigned OMB control number 2577–0132. Information on these requirements is provided as follows:

Description	No. of respondents	No. of responses per respondent	Total annual responses	Hours per response	Total
Applications:					
§ 310	100	1	100	40	4,000
§ 415	100	1	100	80	8,000
Record-Keeping:					
§§ 801 & 805	100	1	100	44	4,400
					16,400

Impact on the Economy

The amendments to these guidelines would not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of these guidelines indicates that it would, as defined by that order, not have (a) an annual effect on the economy of $100 million or more; or (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. At the time of publication of the final rule for the program, HUD will update its regulatory impact analysis, based on any comments received.

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 7th St., SW, Washington, DC 20410.

Impact on the Family

The General Counsel, as the designated official under Executive Order 12606, The Family, has determined that the amendments to the guidelines do not have a potential significant impact on the formation, maintenance, and general well-being of the family. Achievement of homeownership by low-income families in the program under the guidelines, as amended, can be expected to support family values, by helping families achieve security and independence; by enabling them to live in decent, safe, and sanitary housing; and by giving them the skills and means to live

independently in mainstream American society. Since the impact on the family is beneficial, no further review is necessary.

Federalism Impact

The General Counsel has also determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that the amendments to these guidelines are closely based on statutory requirements and impose no significant additional burdens on States or other public bodies. The notice does not affect the relationship between the Federal government and the States and other public bodies or the distribution of power and responsibilities among various levels of government. Therefore, the policy is not subject to review under Executive Order 12612.

Semiannual Agenda

These Guidelines were listed as item number 1332 in the Department's Semiannual Agenda of Regulations published at 56 FR 53380, 53392 on October 21, 1991 under Executive Order 12291 and the Regulatory Flexibility Act.

Impact on Small Entities

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that the amendments to the guidelines would not have a significant economic impact on a substantial number of small entities. The guidelines, as amended, govern the procedures under which HUD would make assistance available to applicants under a program designed to provide homeownership opportunities to low-income families and individuals.

Editorial Note: These revised program guidelines will appear in an appendix to subtitle A of title 24 of the Code of Federal Regulations.

Program Guidelines

Table of Contents

I. Purpose; Summary; and Relationship to Other Programs

Section 101. Purpose.

The purpose of the HOPE 1 program is to provide homeownership opportunities for eligible families to purchase multifamily and non-scattered site, single family public and Indian housing.

Section 105. Summary.

Under the HOPE 1 program, HUD makes planning grants and implementation grants to selected eligible applicants to assist them in developing and carrying out homeownership programs for eligible families. A recipient may use its implementation grant to fund rehabilitation, and cover other eligible program costs. An eligible applicant may (but is not required to) apply for a planning grant to assist it in developing a homeownership program, including the development of resident organizations, feasibility studies, counseling and training of residents and homebuyers, activities necessary for the development of a homeownership program, and preparation of an application for an implementation grant.

An eligible applicant may apply for an implementation grant to fund activities necessary to carry out an approved howeownership program. Applicants may not submit an application for a planning grant and an implementation grant for the same property in response to any one NOFA. Each recipient is required to assure that a specified portion of the HOPE implementation grant is matched from non-Federal sources. (Certain IHAs may be exempt; see section 410(d).) Units must meet specified housing quality standards, and eligible families may not be required to pay more than 30 percent of adjusted income per month for principal, interest, taxes, and insurance to complete a sale under the program.

Section 110. Relationship to other programs.

(a) *Waiver of section 8 regulations.* HUD may make section 8 authority available for use in support of the HOPE 1 program, and intends to approve requests for waivers of the certificate and housing voucher regulations to facilitate its use. Under the section 8 program, HUD makes rental assistance available to assist eligible families. Owners of units under the section 8 program receive a housing assistance payment equal to the difference between the rent for the unit and the amount payable by the eligible family, which is, in most cases, 30 percent of the family's adjusted income. See 24 CFR parts 882 and 887 for the rules governing the Section 8 Certificate and Housing Voucher programs.

To permit issuance of certificates and vouchers to otherwise eligible nonpurchasing residents who qualify as low-income families, HUD will determine that good cause exists and approve requests to waive—

(1) The provisions prohibiting issuance of certificates and vouchers based on the identity or location of the housing occupied by the family, since one purpose of providing section 8 assistance under the HOPE program is to aid nonpurchasing residents in eligible properties and section 8 assistance will be reserved for this purpose;

(2) The provisions establishing Federal preferences when the assistance is used for nonpurchasing residents, since the section 8 assistance is being made available for these families and it makes no sense to apply the preferences in this context; and

(3) The provisions limiting use of certificates and vouchers by very low-income families. (Section 413(a) of NAHA amended the 1937 Act to permit this waiver under the Voucher program.) HUD has determined that, under the law, nonpurchasing residents should be given section 8 assistance if permitted by law and, therefore, will provide for issuance of certificates and vouchers to low-income families, not only very low-income families.

Additional waivers may be necessary to make section 8 assistance readily available in support of the HOPE program. HUD will also consider requests for such other waivers.

HUD intends to issue final regulations amending the section 8 regulations to achieve these purposes when it publishes the final HOPE regulation.

(b) *Right to purchase.* Where HUD approves an application providing for the transfer of title to a public or Indian housing development from the PHA/IHA to another applicant or entity, the PHA/IHA shall transfer the development to the other applicant or entity, in accordance with the approved homeownership program

(c) *Relationship to other homeownership program.* Homeownership opportunities under the HOPE 1 program are in addition to any other public and Indian housing homeownership and management opportunities, including opportunities under section 5(h) and title II of the 1937 Act.

(d) *Inapplicability of section 18.* The requirements of section 18 of the 1937 Act, governing demolition and disposition of public or Indian housing, do not apply to the HOPE 1 program. See section 18(e) of the 1937 Act, which was added by section 412(b) of NAHA.

(e) *Section 8 ACCs.* Section 413(b) of NAHA authorizes HUD to enter into annual contributions contracts with PHAs/IHAs for the purpose of replacing public or Indian housing transferred under the HOPE 1 program with section 8 certificate and voucher assistance. The section 8 annual contributions contract shall be for a term of up to five years.

(f) *Modernization.* HUD may not make available modernization assistance under section 14 of the 1937 Act with respect to a public or Indian housing development after the date the PHA/IHA transfers title in accordance with a homeownership program under this notice. See section 14(n) of the 1937 Act, which was added by section 414 of NAHA.

(g) *Section 20(f) assistance for RMCs and RCs.* HUD may not provide additional assistance under section 20(f) of the 1937 Act to any RMC or RC if assistance for its development or formation is provided under the HOPE 1 program. See section 20(f) of the 1937 Act, which was added by section 415 of NAHA.

(h) *Continuation of annual contributions.* Notwithstanding sale of a public or Indian housing development by a PHA/IHA under this program, or the purchase of a unit in a public or Indian housing development by an eligible family, HUD shall continue to pay any annual contributions still payable with respect to the development, subject to the maximum cap applicable to such contributions under section 5(a) of the 1937 Act.

(i) *Operating subsidies.* HUD may not provide operating subsidies under section 9 of the 1937 Act with respect to a public or Indian housing development after the date the PHA/IHA transfers title in accordance with a homeownership program under this notice. The implementation grant may be used to cover the estimated amount of any shortfall in operating income after transfer by the PHA/IHA.

(j) *Reservation of section 8 authority.* HUD may reserve authority to provide section 8 certificate and housing voucher assistance to the extent necessary to provide replacement housing and rental assistance for a nonpurchasing resident who resides in an eligible property on the date HUD notifies the applicant of approval of an implementation grant application, for use by the resident in another property. HUD encourages PHAs/IHAs to make other section 8 assistance available for use in connection with the HOPE 1 program. See paragraph (a) of this section for a discussion of waivers of section 8 regulations to facilitate use of section 8 assistance.

(k) *Variations to FHA single family mortgage insurance programs.* (1) All regulatory requirements and underwriting procedures established for the FHA single family mortgage insurance programs shall apply, except for the changes described in paragraph (k) of this section.

(2) In the single family FHA mortgage insurance programs there is a requirement for a down payment by the mortgagor in cash or the equivalent. Since a recipient under the HOPE program may provide the down payment for the eligible family/mortgagor, section 429 of NAHA amended section 203(b)(9) of the National Housing Act to provide that the required down payment may be paid by a corporation or person other the mortgagor if the mortgage covers a unit under the HOPE program. Therefore, the regulations at 24 CFR 203.19(b), 203.32(b), 234.28(c) and 234.55(b) were amended by an interim rule published on February 4, 1991, 56 FR 4476. These amendments provide that a mortgagor being assisted in the purchase of a housing unit in connection with the HOPE program may obtain a loan for the down payment from a corporation or another person under conditions satisfactory to HUD. In addition, a second mortgage may be placed against the property even though the entity holding a second mortgage is not a Federal, State, or local government agency, if the entity is designated in the homeownership plan of an applicant for an implementation grant under the HOPE programs.

II. Definitions

1937 Act. The United States Housing Act of 1937, 42 U.S.C. 1437 *et seq.*

Administrative costs. Administrative costs that are reasonable and necessary, as described in and valued in accordance with OMB Circular A–87 or A–122,[1] as applicable, incurred by a recipient in carrying out a homeownership program under this notice. For purposes of complying with the 15 percent limitation in section 405(b)(4), administrative costs do not include the costs of activities which are separately eligible under section 405 or section 410.

Applicant. The following entities that represent the residents of the eligible property:

(a) An RMC (resident management corporation).

(b) An RC (resident council).

(c) A cooperative association.

(d) A public or private nonprofit organization.

(e) A public body, including an agency or instrumentality thereof.

(f) A PHA (public housing agency).

(g) An IHA (Indian housing authority).

A cooperative association may be an eligible applicant only for eligible property it proposes to acquire and transfer ownership interests in to eligible families under a homeownership program.

CHAS. A comprehensive housing affordability strategy under section 105 of NAHA. See 24 CFR part 91.

Cooperative association. An association organized and existing under applicable State and local, or tribal, law primarily for the purpose of acquiring, owning, and operating housing for its members or shareholders, as applicable.

Eligible family. (a) A low-income family; or

(b) A family or individual who is a resident in the public or Indian housing development on the date HUD approves an implementation grant; or

(c) A family or individual who is assisted under a housing program administered by HUD or the Department of Agriculture (not including any non-low-income families assisted under any mortgage insurance program administered by either Department).

Eligible property. A public or Indian housing development, other than a PHA's or IHA's scattered-site single family properties. Properties with up to four units qualify as single family properties. Single family public or Indian housing properties that are contiguous to other single family public or Indian housing properties, such as townhouses and adjacent detached houses, are eligible under HOPE 1.

Homeowership program. A program for homeownership meeting the requirements under this notice. The program shall provide for acquisition by eligible families of ownership interests in the units in an eligible property under an ownership arrangement approved by HUD under this notice, for occupancy by the eligible families. At least 66 percent of the units must be acquired by eligible families (or such higher percentage as may be required under State, local, or tribal law governing cooperative associations or other form of homeownership used under the program).

HUD. The United States Department of Housing and Urban Development.

IHA. An Indian housing authority, which means any entity that—

(a) Is authorized to engage in or assist in the development or operation of low-income housing for Indians; and

(b) Is established (1) by exercise of the power of self-government of an Indian tribe independent of State law; or (2) by operation of State law providing specifically for housing authorities for Indians, including regional housing authorities in Alaska.

Indian housing development. An Indian public housing project under the 1937 Act.

Low-income family. A family or individual that qualifies as a low-income family under 24 CFR part 913 or, for Indian housing developments, part 905. NAHA changed the term lower income family to low-income family; these terms have the same meaning. In general, 24 CFR part 913 defines the term lower income family as a family whose annual

[1] See section 510(b) concerning the availability of OMB Circulars.

income does not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 80 percent of the median income for the area on the basis of its finding that such variations are necessary because of the prevailing levels of construction costs or unusually high or low family incomes.

NAHA. The Cranston-Gonzalez National Affordable Housing Act, Public Law 101–625.

NOFA. Notice of Fund Availability.

Nonprofit organization. Any nonprofit organization that—

(a) Is organized and existing pursuant to Federal, State, local, or tribal law;

(b) Has no part of its net earnings inuring to the benefit of any individual, corporation, or other entity;

(c) Has a voluntary board;

(d) Has an accounting system or has designated a fiscal agent in accordance with requirements established by HUD; and

(e) practices nondiscrimination in the provision of assistance.

Ownership interest. Ownership by an eligible family by fee simple title to a unit in an eligible property (including a condominium unit), ownership of shares of or membership in a cooperative, or another form of ownership proposed and justified by the applicant and approved by HUD. The ownership interest may be subject only to (a) the restrictions on resale required or approved under section 720; (b) mortgages, deeds of trust, or other liens or instruments securing debt on the property as approved by HUD; or (c) any other restrictions or encumbrances which do not impair the good and marketable nature of title to the ownership interest. Mutual housing is eligible only to the extent it provides for the transfer of ownership interests to eligible families.

PHA. A public housing agency, which means any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of low-income housing.

Private nonprofit organization. A nonprofit organization that is privately controlled and that is a tax exempt entity under section 501(c) of the Internal Revenue Code of 1986. For purposes of this requirement, private nonprofit organizations shall have governing bodies which are controlled 51 percent or more by private individuals who are acting in a private capacity. For purposes of this provision, an individual is considered to be acting in a private capacity if the individual is not legally bound to act on behalf of a public body (including the applicant or recipient), and is not being paid by a public body (including the applicant or recipient) while performing functions in connection with the nonprofit organization.

Public body. Any State of the United States; any city, county, town, township, parish, village, or other general purpose political subdivision of a State; the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa, the Federated States of Micronesia and Palau, the Marshall Islands, or a general purpose political subdivision thereof; any Indian tribe, as defined in title I of the Housing and Community Development Act of 1974; any public agency or instrumentality of any of the foregoing jurisdictions which is created by or pursuant to State or local, or tribal, law and for which the applicable jurisdiction has agreed to accept financial responsibility in the event of any noncompliance or liability under the HOPE 1 program; and any PHA or IHA. For purposes of this definition, an organization which meets the requirements of paragraphs (a) and (b) of the definition of nonprofit organization, but is controlled 51 percent or more by public officials acting in their official capacities, may qualify as a public body.

Public housing development. A public housing project under the 1937 Act.

RC. A resident council, which means any incorporated non-profit organization or association that—

(a) Is representative of the residents of the eligible property;

(b) Adopts written procedures providing for the election of specific officers on a regular basis (but at least once every three years); and

(c) Has a democratically elected governing board, elected by the residents of the eligible property, the voting membership of which consists of residents of the property.

Recipient. An applicant approved to receive a grant under this notice or such other entity specified in the HUD-approved application that will assume the obligations of the recipient under this notice.

RMC. A resident management corporation that proposes to enter into, or enters into, a management contract with a PHA or IHA for an eligible property and that—

(a) Is a nonprofit organization that is incorporated under the laws of the State or tribe in which it is located;

(b) May be established by more than one resident organization or RC, so long as each such organization or RC (1) approves the establishment of the RMC and (2) has representation on the board of directors of the RMC;

(c) Has an elected board of directors;

(d) Has by-laws that require the board of directors to include representatives of each resident organization or RC involved in establishing the corporation;

(e) Provides that its voting members are residents of the eligible property it manages or will manage under a homeownership program and of any other property or public or Indian housing developments;

(f) Is approved by the RC; if there is no RC, a majority of the households of the eligible property shall approve the establishment of an RC to determine the feasibility of establishing a corporation to manage the property; and

(g) May serve as both the RMC and the RC, so long as the RMC qualifies as an RC.

III. Planning Grants

Section 301. Planning grants.

(a) *General authority* HUD will make HOPE 1 planning grants to applicants for the purpose of developing homeownership programs under this notice. HUD shall select applications based on a national competition. HUD will assure compliance with the requirement for national geographic diversity by selecting at least two mini and two full planning grants in each of the 10 HUD Regions, to the extent sufficient funds are available. Where both an RMC and an RC submit applications for the same eligible property, HUD shall consider only the application from the RMC.

(b) *Planning grants.* (1) Applicants may request a full planning grant covering all necessary planning activities specified in section 305 or a mini planning grant. Mini planning grants, generally for establishing or increasing the capacity of the applicant to apply for and carry out a specific homeownership program, may cover some or all of the activities specified in sections 305 (a), (b), (c), and (f). An applicant may request a mini planning grant and, pursuant to a subsequent NOFA, a full planning grant, but in no case may a full planning grant duplicate previously funded activities.

(2) The amount of a planning grant (or the total amount of a mini planning grant and a full planning grant) under this section may not exceed $200,000, except that the Secretary may for good cause approve a grant in a higher

amount, based on a justification submitted by the applicant demonstrating that the costs are reasonable. The maximum amount for a mini planning grant shall be $100,000, except that HUD may for good cause approve a grant in a higher amount, based on a justification submitted by the applicant demonstrating that the costs are reasonable. Where the proposed program provides for homeownership opportunities using more than 250 units, no additional demonstration of good cause for approving a planning grant of more than $200,000 (or of more than $100,000 in the case of mini planning grants) is required if the additional amount requested is not more than $800 for each unit over 250 for a planning grant (or not more than $400 for each unit over 250 for a mini planning grant).

(3) Activities funded under a mini planning grant shall be carried out within 18 months of the effective date of the mini planning grant agreement. Full planning grants shall be carried out within three years of the effective date of the full planning grant agreement (or within 18 months of such effective date if HUD has previously approved a mini planning grant for the proposed program).

(c) *Set-aside.* HUD shall allocate up to 15 percent of the total amount appropriated for grants under the HOPE 1 program for planning grants, but not less than $10 million. Of the amount set aside for planning grants, 25 percent shall be set aside for mini planning grants.

Section 305. Eligible planning grant activities.

Planning grants may be used for the reasonable costs of eligible activities necessary to develop homeownership programs. Only costs incurred on or after the effective date of the grant agreement qualify for funding under the program. Eligible planning grant activities include—

(a) *Development of RMCs and RCs.* Development of RMCs and RCs in connection with a specific homeownership program, including activities such as—

(1) Consulting and legal assistance to incorporate the entity;

(2) Preparing by-laws and drafting a corporate charter;

(3) Designing and implementing personnel policies; performance standards for measuring staff productivity; policies and procedures covering organizational structure, recordkeeping, maintenance, insurance, occupancy, and management information systems; and any other recognized functional responsibilities relating to property management;

(4) Designing and implementing financial management systems that include provisions for budgeting, accounting, and auditing; and

(5) Administrative costs necessary to the implementation of the activities specified in paragraphs (a)(1)–(4) of this section.

Funding for this activity may not be provided for an RMC or RC that has received funding under section 20(f) of the 1937 Act, unless the applicant submits work plans used in connection with previous grants demonstrating to HUD's satisfaction that the planning grant will not be duplicative.

(b) *Training and technical assistance.* Training and technical assistance for applicants related to development of a specific homeownership program. This category may cover such activities as establishing community organization, outreach, and support systems; legal requirements for establishing cooperative, condominium, and other homeownership entities; and the role of the board of directors in an RMC.

(c) *Feasibility studies.* Studies of the feasibility of a specific homeownership program, including whether the program can be designed to meet the affordability standards under the notice and achieve financial feasibility.

(d) *Preliminary architectural and engineering work.* Preliminary architectural and engineering work, including work necessary to support cost estimates included in an implementation grant application.

(e) *Counseling and training.* Resident and homebuyer counseling and training. This category may cover such activities as the various ways to become a homeowner (such as cooperative and fee simple ownership) and financing alternatives.

(f) *Economic development.* (1) Planning for economic development, job training, and self-sufficiency activities that promote economic self-sufficiency of eligible families who will become homeowners under the homeownership program.

(2) The application shall demonstrate that the proposed activities are directly related to implementation of the proposed homeownership program, and describe how these activities promote self-sufficiency.

(3) The aggregate amount of planning and implementation grants that may be used for economic development activities may not exceed $250,000 for any single homeownership program.

(g) *Security plans.* Development of security plans. This activity may cover assessing the need for the hiring of security personnel and creating tenant patrols, for negotiating agreements with local law enforcement agencies, and for providing security systems.

(h) *Application for implementation grant.* Preparation of an application for an implementation grant under this notice.

(i) *Other activities.* Other activities proposed and justified as necessary for the development of a homeownership program by the applicant and approved by HUD.

Section 310. Applications for planning grants.

(a) *NOFA.* An application for a planning grant shall be submitted by an applicant in accordance with this notice and the NOFA. The NOFA advises potential applicants how to obtain an application package and establishes deadlines and other requirements for submission of applications. The NOFA also informs each applicant that it may request information and guidance from HUD about program requirements and preparation of the application.

(b) *Application contents.* Each application shall contain the information required by the application package, which shall include at least the following items.

(1) *Request for planning grant.* (i)(A) The application shall contain a summary description of the proposed homeownership program and a request for a planning grant (specifying whether the application is for a mini planning grant or a full planning grant), (B) the schedule for completing the activities, (C) the personnel necessary to complete the activities, and (D) the amount of the grant requested (including justification for a grant request exceeding $200,000 if the development has 250 or fewer units or exceeding the applicable per unit limitation if the development has more than 250 units).

(ii) An application for a full planning grant shall contain sufficient detail for HUD to determine whether the proposed homeownership program will cover all eligible activities necessary to make the proposed program feasible, whether or not the application requests HUD funding for each activity.

(iii) Where no resident entity has been established for the property, the application shall propose establishment of such an entity (such as an RMC, RC, or cooperative association) promptly after the effective date of the grant agreement.

(2) *Qualifications and experience of applicant.* (i) The application shall describe the applicant and contain a statement of its qualifications. HUD

encourages two or more entities to submit applications together. For example, an application submitted by a newly established RMC and an experienced nonprofit organization may greatly increase the likelihood of the success of the proposed homeownership program. The application shall specify which entity will be the recipient and execute the grant agreement, and include a certification that the entities have entered into a written agreement between them that delineates their respective roles.

(ii) An application from a private nonprofit organization that has applied for tax exempt status under section 501(c) of the Internal Revenue Code of 1986 on or before the date of application may be considered so long as the organization is approved before the effective date of the grant agreement.

(3) *Eligible property.* The application shall identify and describe the eligible property involved, and describe the composition of the residents, including family size and income, and racial, ethnic, and gender characteristics of the residents, as required by HUD and as described in the application package. In addition, the application shall describe the neighborhood in which the property is located and include a map showing the location of the property and the racial and ethnic characteristics of the neighborhood.

(4) *CHAS certification.* (i) The application shall contain a certification by the public official, or his or her authorized representative, who submits the CHAS that the proposed activities are consistent with the approved CHAS of the State or unit of general local government within which the eligible property is located.

(ii) Paragraph (b)(4)(i) of this section shall not apply to an application submitted by an Indian tribe or IHA. Indian tribes and IHAs are not included in the definition of a "jurisdiction," the entity charged with submitting a CHAS. HUD has concluded that Indian tribes and IHAs need not submit a CHAS and need not submit a certification of consistency with a housing strategy.

(5) *Equal opportunity certifications.* (i) The application shall contain—

(A) A certification that the applicant will comply with the requirements of the Fair Housing Act, title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973; and the Age Discrimination Act of 1975, and will affirmatively further fair housing; or

(B) In the case of an application from an Indian tribe or IHAs, under the circumstances described in Section 505(a)(2) of this notice, a certification that the applicant will comply with the Indian Civil Rights Act (25 U.S.C. 1301 *et seq.*), section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

(ii) A statement from the applicant (A) whether or not a desegregation order, agreement, or plan that applies to the applicant is in effect or known to the applicant to be under consideration; (B) that the applicant is not in violation of any existing desegregation order, compliance agreement, or voluntary agreement, or a statement describing the circumstances of the violation; and (C) describing any potential impact the proposed homeownership program may have on implementing any existing or pending order, agreement, or plan.

(6) *Resident interest.* (i) *RMC or RC is an applicant.* Where the applicant (or one of the applicants) is an RMC or RC, the application shall contain a board resolution from the RMC or RC supporting the application.

(ii) *RMC or RC exists for the eligible property.* Where the applicant (or one of the applicants) is not an RMC or RC for the eligible property and there is an RMC or RC for the eligible property, the application shall contain a board resolution from the RMC, or (if there is no RMC) the RC, for the eligible property that it is interested in a homeownership program and that the applicant is submitting the application on behalf of the RMC or RC for the eligible property.

(iii) *RMC or RC does not exist for the eligible property.* In all cases where there is no RMC or RC for the eligible property, the application shall include a survey conducted by the applicant of resident interest in homeownership and marketability of the units, which shall be conducted in accordance with procedures set forth in the application package. If the development is less than 50 percent vacant, at least 50 percent of the households of the eligible property must indicate that they are interested in exploring the possibility of homeownership. If the development is 50 percent or more vacant, the survey must indicate that there are at least 1.2 interested eligible families for each unit in the proposed property that is not occupied by a family interested in homeownership.

(7) *Nonduplication of funding.* The application shall contain a certification that the applicant has not and will not receive assistance from the Federal government, a State, or a unit of general local government, or any agency or instrumentality thereof, for activities for which funding is requested in the application.

(8) *Disclosures required by Reform Act.* Section 102(b) of the HUD Reform Act of 1989, Public Law 101–235 (December 15, 1989) requires disclosure of other information concerning other government assistance to be made available with respect to the program and parties with a pecuniary interest in the homeownership program, and submission of a report on expected sources and uses of funds to be made available for the program. Each application shall include the information required by 24 CFR part 12, subpart C, the regulation that implements section 102(b) of the Reform Act. An implementing notice for 24 CFR part 12, subpart C, is being published in the **Federal Register.** Applicants shall use the form and guidance contained in that notice to make the required disclosures.

(9) *Other requirements.* The application shall contain certifications and other information required by the application package.

(c) *Screening by HUD.* (1) HUD shall screen each application submitted on or before the deadline set forth in the NOFA to determine whether it is complete, is internally consistent, and contains correct computations. Where HUD determines an application is deficient in one or more of these areas, it shall notify the applicant in writing and give it an opportunity to correct the deficiencies in its application. However, the applicant may not substantially revise the application, such as by substituting another eligible property or applicant or changing other fundamental features of the program, because that would not be fair to other applicants. The notification shall also require applicants to submit additional or correct material so it is received in the appropriate HUD office no later than close-of business on the 14th calendar day after the date of the written notification to the applicant giving it an opportunity to modify its application. HUD may not extend this deadline for actual receipt of the material for any reason. HUD shall not consider further any applications that do not meet one of the tests in the first sentence of paragraph (c)(1) of this section, after the opportunity, if any, to submit additional or corrected material, or that fail to comply with other program requirements.

(2) The purpose of this procedure is to increase the number of approvable applications so viable homeownership opportunities may be developed at the earliest possible time, while giving each applicant an equal opportunity to receive HUD assistance and correct deficiencies. HUD anticipates that many applicants will be relatively new and

may need this additional opportunity to perfect their applications.

(Approved by the Office of Management and Budget under control number 2577–0132.)

Section 315. Rating, ranking, and selection of planning grant applications.

(a) *Rating.* HUD shall review each application that qualifies for additional consideration under the screening procedures in section 310(c) and assign points in accordance with the following selection criteria—

(1) *Capability.* The qualifications or potential capabilities of the applicant for developing a successful and affordable homeownership program. In assigning points for this criterion, HUD shall consider evidence in the application demonstrating—

(i) The capability of the applicant to handle financial resources, demonstrated through such evidence as previous experience and existing financial control procedures, or an explanation of how such capability will be obtained—15 points;

(ii) The applicant has direct experience in working with residents of public or Indian housing developments—10 points.

(iii) The applicant has direct experience in representing residents of public or Indian housing developments—5 points.

(iv) The extent to which the proposal represents a sound approach to the planning process—5 points.

(v) A demonstration by the applicant or a joint applicant that it is an RMC or RC—5 points.

Maximum points for this criterion (1): 40 points.

(2) *Resident and homebuyer interest and marketability.* The extent of resident and homebuyer interest in, and marketability of, the development of a homeownership program for the eligible property.

(i) Where the applicant is not an RMC or RC and the development is less than 50 percent vacant, HUD shall assign points based on the percentage of current residents of the property interested in participating in the proposed homeownership program, based on a survey conducted by the applicant and submitted to HUD as part of the application.

(A) If 75 percent or more of the residents are interested: 15 points; or

(B) If 50–74.99 percent of the residents are interested: 10 points.

(ii) Where the applicant is not an RMC or RC and the development is 50 percent or more vacant, HUD shall assign points based on the number of interested eligible families interested in participating in the proposed homeownership program based on a survey conducted by the applicant and submitted to HUD as part of the application. The purpose of the survey is to determine if there is a sufficient pool of eligible families interested in purchasing units in the proposed eligible property.

(A) If there are 1.5 or more interested eligible families for each unit in the proposed property not occupied by a family interested in homeownership: 15 points; or

(B) If there are 1.2–1.49 interested eligible families for each unit in the proposed property not occupied by a family interested in homeownership: 10 points.

(iii) Where the applicant is an RMC or RC and—

—A simple majority of the governing board favors homeownership—10 points; or

—Two-thirds of the governing board favors homeownership—15 points.

Maximum points for this criterion (2): 15 points

(3) *Suitability of the property.* The suitability of the eligible property for homeownership. Suitability for homeownership shall be determined based on—

(i) Proximity or accessibility of the property to places of employment, shopping, schools, medical facilities, transportation, places of worship, recreational facilities, and other necessary services for the families under the program—5 points;

(ii) Whether the surrounding neighborhood is free from conditions which are seriously detrimental to the quality of life; substandard dwellings or other undesirable elements must not predominate, unless the undesirable conditions affecting the eligible property can be mitigated—5 points; and

(iii) Whether the structure type and bedroom configuration are (or have the potential, through rehabilitation, to become) appropriate for the proposed homeownership program—5 points.

The review will be made in the context of where public or Indian housing is typically located.

Maximum points for this criterion (3): 15 points.

(4) *Local support.* The extent of cooperation or support, or both, from the unit of general local government, neighborhood organizations, and providers of services and resources appropriate to assist eligible families to achieve economic independence. In assigning points for this criterion, HUD shall consider—

(i) Evidence of support for the homeownership program, demonstrated through letters, resolutions, or other expressions of support from State or local governments and PHAs/IHAs—5 points;

(ii) Evidence of support for the homeownership program, demonstrated through letters, resolutions, or other expressions of support from community, civic, religious, or other entities—5 points; and

(iii) Evidence from entities other than the applicant that funds, services, or other resources will be made available in support of the homeownership program, demonstrated through letters, resolutions, or other expressions of support from providers of services and other resources—5 points. The highest number of points shall be assigned based on the quality, expected duration, and amount of support to the homeownership program.

Maximum points for this criterion (4): 15 points.

(5) *Efficiency.* The extent to which the applicant maximizes efficiency in its plan for use of a planning grant. The lower the cost of the planning grant per unit in relation to other applications, the greater the efficiency.

Maximum points for this criterion (5): 15 points.

Total number of points: 100 points.

(b) *Ranking and selection to assure national geographic diversity.*

(1) After assigning points to each application under paragraph (a) of this section, HUD shall separately rank mini planning grant applications together and full planning grants together. HUD shall then select the two highest ranking applications on each list (one containing only mini planning grant applications and the other containing full planning grant applications) from each of the 10 HUD Regions. For both mini planning grants and full planning grants, if none of the 20 applications involves an Indian housing development and sufficient funds are available, the highest ranking application involving an Indian housing development shall also be approved.

(2) HUD shall then select from each list the highest ranking applications without regard to their location.

(3) If two or more applications have the same number of points, the application submitted by an RMC or RC shall be selected. If there is still a tie, the application with the most points for capability shall be selected. If there is still a tie, the application with the most points for efficiency shall be selected.

(4) When the amount remaining after funding as many of the highest ranking applications as possible is insufficient for the next highest ranking application, HUD shall determine if it is feasible to

fund part of the application, with the remainder to be funded "off the top" from possible future funding rounds. If so, that application shall be funded. If not, HUD shall make the same determination for the next highest application or applications. Any remaining amounts shall be used in accordance with paragraph (g) of this section.

(5) Procedural errors discovered after initial ratings but before notification of applicants shall be corrected and rankings revised. Procedural errors discovered after notification of approved applicants which, if corrected, would result in approval of an application which was not approved will be corrected by funding the application from any unused amounts or "off the top" from amounts available for planning grants in the next funding round.

(c) *Use of set-asides to fund other planning grants.* Any amounts set aside to fund applications for mini planning grants that are not needed because there are insufficient approvable applications shall be used to fund the highest ranked, unfunded applications for full planning grants. Any amounts set aside to fund applications for full planning grants that are not needed because there are insufficient approvable applications shall be used to fund the highest ranked, unfunded applications for mini planning grants.

(d) *Reduction in requested grant amounts.* HUD shall approve a planning grant application for an amount lower than the amount requested or adjust line items in the proposed budget within the amount requested (or both) if it determines the amount requested for one or more eligible activities is unreasonable or unnecessary or does not otherwise meet applicable cost limitations established for the program.

(e) *Notification of approval or disapproval.* After completion of the ranking and selection of proposals under paragraph (b) of this section, HUD shall notify the selected applicants and the applicants that have not been selected, in writing.

(f) *Use of remaining amounts to fund HOPE 1 implementation grants.* Any amounts available to fund planning grants that are not needed because there are insufficient approvable applications shall be used to fund the highest ranked, unfunded implementation grant applications.

(g) *Insufficient approvable applications.* If funds remain after HUD approves all approvable applications, including implementation grant applications, as provided in this notice, HUD may publish a NOFA inviting applications for planning or implementation grants, or both, in accordance with this notice; or invite applicants who submitted applications that could not be funded to submit amended planning grant or implementation grant applications in accordance with this notice within a deadline specified in the invitation. Any remaining amounts shall be added to amounts available for subsequent funding rounds.

(h) *Environmental review.* HUD has determined that its approval of applications for planning grants is categorically excluded from environmental review and compliance requirements of the National Environmental Policy Act of 1969 (NEPA) and that other Federal environmental laws and authorities listed in 24 CFR 50.4 are not applicable. The reason is that planning grants involve no rehabilitation and little or no physical change and that, generally, not enough information is available about the proposed homeownership program at this point to make the review. HUD has excluded planning grant applications from environmental assessment under NEPA and exempted planning grant applications from environmental review under the laws and authorities listed in 24 CFR 50.4. See the interim rule amending 24 CFR part 50 that is published elsewhere in today's edition of the **Federal Register**. Applicants are reminded, however, that environmental review at the implementation grant stage may nevertheless result in disapproval.

IV. Implementation Grants

Section 401. Implementation grants.

(a) *Implementation grants.* HUD shall make implementation grants to applicants for the purpose of carrying out homeownership programs approved under this title. Where an RMC and an RC each submit an application for the same eligible property, HUD shall consider only the application from the RMC.

(b) *National competition.* HUD shall select applications based on a national competition. HUD will assure compliance with the requirement for national geographic diversity by selecting at least one implementation grant application for a program in each of the 10 HUD Regions, to the extent sufficient funds are available. If none of the 10 applications involves an Indian housing development and sufficient funds are available, the highest ranking application involving an Indian housing development shall also be approved.

Section 405. Eligible implementation grant activities.

(a) *Limitations.* Implementation grants may be used for the reasonable costs of eligible activities necessary to carry out homeownership programs. Only costs incurred on or after the effective date of the grant agreement qualify for funding under the program.

(b) *Eligible activities.* Eligible activities include—

(1) *Architectural and engineering work.* Architectural and engineering work, and related professional services required to prepare architectural plans or drawings, write-ups, specifications, or inspections.

(2) *Implementation of homeownership program.* (i) *General.* Implementation of the homeownership program, including the provision of assistance to families to make acquisition by them affordable (including interest rate reductions ("interest rate buy-downs") and down payment assistance).

(ii) *Maximum acquisition costs.* The cost of acquisition is not an eligible cost, but closing and other costs related to acquisition of the development are eligible costs. Where a public or Indian housing development contains improvements provided through local tax revenues that increased the value of the development, an applicant may request HUD to waive this limitation to permit use of program funds to pay the PHA/IHA for the depreciated value of the amount of local tax revenues spent on such improvements. The request for the waiver shall document the original contribution, state the basis for computing the amount of the depreciated value, and otherwise justify the request.

(3) *Rehabilitation.* (i) Rehabilitation of the eligible property covered by the homeownership program, in accordance with housing quality standards established by HUD. See also section 505(b) for applicable requirements for accessibility for people with disabilities. The property shall be rehabilitated (including the provision of suitable amenities) to a level that makes it marketable for homeownership in the market area to families with incomes at or below the median for the area. HUD encourages applicants to undertake high quality rehabilitation, even if it goes beyond applicable minimum standards. Luxury items (fixtures, equipment, and landscaping of a type or quality which substantially exceeds that customarily used in the locality for properties of the same general type as the property to be rehabilitated) do not qualify as eligible expenses. The construction of swimming pools is not eligible. The cost to fill in or

eliminate a pool from the property and the cost to repair an existing pool are eligible.

(ii) The application shall describe all improvements to be made to, or amenities to be provided for, the property, whether or not they may be funded by use of grant amounts, contributions towards the match required under the program, or other funds. HUD may disapprove improvements or amenities specified in the application it determines are unsuitable for the HOPE program, even if they will be paid for from non-program funds.

(iii) If an applicant proposes to make improvements to an eligible property beyond those that qualify as eligible costs, it shall assure that their entire cost will be covered by funds other than the HOPE grant and any amounts contributed towards the match and that the affordability of the property will not be impaired. No such local funds may count towards the match.

(iv) The prototype cost cap on rehabilitation shall be based on the cost guidelines applicable to the CIAP program.

(4) *Administrative costs.* Administrative costs of the program. The total amount that may be spent on administrative activities from the amount of the grant and any contribution towards the match may not exceed 15 percent of the amount of the grant HUD provides under this notice.

(5) *Development of RMCs and RCs.* (i) Development of RMCs and RCs, but only if the applicant has not received a HOPE planning grant for such activities. See § 305(a) for examples of eligible activities.

(ii) Funding for this activity may not be provided for an RMC or RC that has received funding under section 20(f) of the 1937 Act, unless the applicant submits work plans used in connection with previous grants demonstrating to HUD's satisfaction that the implementation grant will not be duplicative.

(6) *Counseling and training.* Counseling and training of homebuyers and homeowners under the homeownership program. This may include such subjects as counseling and training related to personal financial management, home maintenance, home repair, construction skills (to the extent appropriate, especially where the eligible family will do some of the rehabilitation), and the general rights and responsibilities of a homeowner.

(7) *Relocation.* Relocation of residents who elect to move, in accordance with section 735.

(8) *Temporary relocation.* Any necessary temporary relocation of residents during rehabilitation, in accordance with section 735.

(9) *Assistance for operating expenses.* (i) Funding of operating expenses for the property, up to the amount necessary to achieve long-term affordability, as provided in section 415(b)(12). Assistance for operating expenses may cover the period beginning after acquisition of the property from the PHA/IHA by the applicant or, if the PHA will transfer the property to eligible families, beginning after transfer to the families. Operating assistance may be used for (A) assistance for potential homeowners during the rental phase (before acquisition of ownership interests by the families), if any, (B) assistance for nonpurchasing residents who remain in the property, (C) assistance for homeowners after transfer of ownership interests to the families during the term of the grant agreement, and (D) the funding of operating reserves.

(ii) In addition, assistance for operating expenses may be drawn down under the grant agreement to fund an operating expenses reserve established in accordance with HUD guidelines, and the interest earned on the reserve shall be credited to it for use for operating expenses under the program.

(iii) The amount of assistance for operating expenses shall not exceed the amount the development would have received if it had continued to receive operating subsidies under 24 CFR part 990, with adjustments comparable to those that would have been made under part 990, as determined by HUD based on actual or estimated cost experience of the development in the year before the proposed sale by the PHA/IHA. Where the actual or estimated costs for that year are unavailable or atypical, the application shall propose an adjustment factor and justify it.

(iv) An implementation grant under this program may provide assistance for operating expenses for up to five years from the date that the PHA/IHA transfers the property. If HUD determines that extraordinary circumstances exist, as described in the application or at the end of the five-year term, that justify extension of the five-year term, it may, at the end of the five-year term, agree to extend the original grant agreement for additional one-year periods, subject to the availability of appropriations for this purpose. However, the total term of the grant agreement, including all extensions, may not exceed 10 years. HUD reminds applicants that the selection criterion measuring efficiency will favor applications proposing lower per unit costs; thus, those applications which propose operating assistance for five years or less will be at a competitive advantage.

(v) The entity with fiduciary responsibility for any operating reserve shall be bonded, in accordance with requirements prescribed or approved by HUD.

(10) *Replacement reserves.* (i) Replacement reserves for the property, up to the amount necessary to achieve long-term affordability, as provided in section 415(b)(12). Assistance for replacement reserves may be drawn down under the grant agreement to fund the reserve established in accordance with HUD guidelines, and the interest earned on the reserve shall be credited to the reserve for use for replacement expenses under the program.

(ii) The entity with fiduciary responsibility for any replacement reserve shall be bonded, in accordance with requirements prescribed or approved by HUD.

(11) *Replacement housing plan.* Implementation of replacement housing plan activities under section 415(b)(8)(i)(E).

(12) *Legal fees.* Customary and reasonable costs of professional legal services.

(13) *Ongoing training needs.* Defraying costs for the ongoing training needs of the recipient for courses of instruction that are directly related to developing and carrying out the homeownership program.

(14) *Economic development.* (i) Economic development activities that promote economic self-sufficiency of homebuyers, residents, and homeowners under the homeownership program, such as job training or retraining and the development, in or near the eligible property, of child care centers that offer work and make it possible for parents to work. The recipient shall enter into written agreements with the providers of economic development services specifying the services to be provided, including estimates of the numbers of homebuyers, residents, and homeowners to be assisted.

(ii) In addition, planning for the establishment of for- or not-for-profit small businesses by or on behalf of residents, job training, and other activities that promote economic self-sufficiency of homebuyers and homeowners of the eligible property covered by the homeownership program and economic development of the neighborhood are eligible.

(iii) The aggregate amount of planning and implementation grants that may be

used for economic development activities may not exceed $250,000.

(15) *Other activities.* Other activities proposed by the applicant, to the extent the applicant justifies them as necessary for the proposed homeownership program and HUD approves them. For example, the applicant may propose activities related to security needs of the property that are not otherwise covered under other eligible activities, such as under architectural and engineering work and rehabilitation activities.

Section 410. Matching requirements for implementation grants.

(a) *Requirement for each recipient to match the HUD grant.* Each recipient shall assure that matching contributions equal to not less than 25 percent of the amount of the implementation grant shall be provided from non-Federal sources to carry out the homeownership program. Amounts contributed to the match shall be used for eligible activities or in accordance with this section. Any grant amounts proposed for operating assistance shall be excluded for purposes of computing the amount to be matched.

(b) *Form.* Contributions may only be in the form of—

(1) *Cash contributions.* (i) Cash contributions from non-Federal resources. To be a cash contribution, funds must be contributed permanently for uses under the HOPE 1 program. Funds will be considered permanently contributed if all repayment, interest, and other return on the contribution will only be used for eligible activities in accordance with program requirements.

(ii) Non-Federal resources may not include funds from a Community Development Block Grant made to an entitlement grantee or a State under section 106(b) or section 106(d), respectively, of the Housing and Community Development Act of 1974, except to the extent permitted for administrative expenses under paragraph (a)(2) of this section. Non-Federal resources may not include Federal tax expenditures, comprehensive grants under section 14 of the 1937 Act, or amounts provided to the development from syndication of the low income housing tax credit. (Financing involving the use of the low income housing tax credit is prohibited by section 415(b)(11)(iii).)

(iii) Non-Federal resources may include contribution of trust funds held by Federal agencies for Indian tribes.

(iv) A cash contribution may be made by the applicant, non-Federal public entities, private entities, or individuals. A cash contribution may be made from program income from a Federal grant earned after the end of the award period if no Federal requirements govern the disposition of the program income. Included in this category are repayments from closed out grants under the Urban Development Action Grant Program (24 CFR part 570, subpart G), and the Housing Development Grant Program (24 CFR part 850).

(v) Cash contributions may also be made from sales proceeds from the Turnkey III Homeownership and Mutual Help programs obtained pursuant to PIH Notice 91–28 or an approved homeownership program under section 5(h) of the 1937 Act.

(vi) The grant equivalent of a below-market interest rate loan to the homebuyer, where all repayments, interest, and other return will not be permanently contributed to the HOPE program, may be counted as a cash contribution.

(A) If the loan is made from proceeds of obligations issued by or on behalf of a public body that are exempt from taxation by the United States, the contribution is the present discounted cash value of the difference between payments to be made on the borrowed funds and payments to be received from the loan to the homebuyer, based on a discount rate equal to the interest rate on the borrowed funds.

(B) If the loan is made from funds other than under paragraph (b)(1)(vi)(A) of this section, the contribution is the present discounted cash value of the yield forgone, calculated based on a discount rate approved or prescribed by HUD. In determining the yield forgone, the recipient must use as a measure of a market rate yield one of the following, as appropriate:

(*1*) With respect to one- to four-unit housing financed with a fixed interest rate mortgage, a rate equal to the 10-year Treasury note rate plus 200 basis points;

(*2*) With respect to one- to four-unit housing financed with an adjustable interest rate mortgage, a rate equal to the one-year Treasury bill rate plus 250 basis points; or

(*3*) With respect to a multifamily project, a rate equal to the 10-year Treasury note rate plus 300 basis points.

(vii) A down payment by an eligible family may not count towards the match.

(viii) Non-Federal resources may include amounts, determined in accordance with paragraph (b)(1)(vi)(B) of this section, that have been requested by the applicant in an application submitted to the Federal Housing Finance Board for assistance under its Affordable Housing program, so long as that application is approved before the date HUD approves the HOPE application.

(2) *Administrative costs.* (i) Payment of eligible administrative costs approved by HUD from non-Federal resources. Contributions for administrative costs that exceed 7 percent of the grant (excluding any assistance for operating expenses) may not count towards the match. (This limitation is in addition to the limitation that the total amount that may be spent on administrative activities from the amount of the grant and any contributions towards the match may not exceed 15 percent of the grant amount (section 405(b)(4).) Non-Federal resources, for the purposes of counting contributions for administrative costs, may include funds from a Community Development Block Grant made to an entitlement grantee or a State under section 106(b) or section 106(d) of the 1974 Act and are subject to the recordkeeping and documentation requirements of that program. (ii) For example, if the grant amount is $500,000 (excluding any operating assistance), the recipient must assure the provision of at least $125,000 (25 percent of the grant) from non-Federal sources. Contributions for administrative costs that may be counted towards the match may not exceed $35,000 (7 percent of the grant amount of $500,000). Although an applicant can spend more than this on administrative costs, it may not be counted towards the match. The applicant shall provide contributions covering the remaining $90,000 ($125,000 −$35,000) required for the match from non-Federal sources.

(3) *Taxes, fees, and other charges.* The present value of taxes, fees, or other charges that are normally and customarily imposed but are waived, forgone, or deferred in a manner that facilitates the implementation of a homeownership program assisted under this notice. Only amounts for the period after the date a property is acquired by a recipient or other entity for transfer to eligible families (or the effective date of the implementation grant agreement if the PHA will transfer to eligible families) may be counted towards the match. For example, if a city agrees to forgo real property taxes for 20 years, the application shall compute the estimated tax that would be otherwise payable over the 20 year period, and discount it to present value based on a discount rate approved or prescribed by HUD. Amounts that would be waived, forgone, or deferred for longer than 20 years from the date a family acquires homeownership interests in the unit may not be counted towards the match because enforcement would be

impracticable. Where the match includes amounts under paragraph (b)(3) of this section, the documents transferring the homeownership interest to the family shall evidence the contribution, to the extent the contribution has not already been received.

(4) *Land or other real property.* Real property, not acquired with Federal resources, contributed for use under an approved homeownership program.

(i) For HOPE 1, the value of eligible property may not be counted as a contribution towards the match.

(ii) The as-is fair market value of land or other real property may be counted as a contribution towards the match, determined in accordance with a recent appraisal conducted under procedures established or approved by HUD.

(5) *Infrastructure.* The fair market value of investment, not made with Federal resources, in on-site and off-site infrastructure required for homeownership program. The infrastructure investment may be counted towards the match only if it was completed no earlier than 12 months before the date of notification by HUD of implementation grant approval and no later than five years from the effective date of the grant agreement. Investment in infrastructure may include such activities as new or repaired utility laterals connecting eligible property to the main line and new or rebuilt walkways, sidewalks, or curbs on or contiguous to the eligible property. If the investment in infrastructure also benefits other properties, only the share of the costs directly benefiting the eligible property under the homeownership program may be counted towards the match.

(6) *Debt forgiveness.* Where debt on real property to be acquired under the program (other than a public or Indian housing development) is forgiven, permitting the property to be acquired for less than fair market value, the savings may count as a match. However, the forgiveness of the amount of any debt exceeding fair market value of a property under the program, determined under paragraph (b)(4) of this section, may not be counted towards the match.

(7) *Other in-kind contributions.* (i) The reasonable value of in-kind contributions proposed by the applicant in the application and approved by HUD. In reviewing proposed in-kind contributions, HUD shall review to ensure (A) the proposed contribution is to be used for an eligible activity under the proposed homeownership program, (B) the application demonstrates that the proposed in-kind contribution will actually be provided; and (C) the proposed value of the contribution is reasonable. In determining whether the value is reasonable, HUD shall generally consider the amount such work would otherwise cost the program, but may adjust the value, based on special circumstances.

(ii) All donated labor, including sweat equity provided by a homebuyer or homeowner, shall be valued at $10 an hour, except for donated professional labor, as approved by HUD, including work by homebuyers and homeowners. The donated professional labor shall be valued at the fair market value of the work completed. Professional labor is work ordinarily performed by the donor for payment, such as work by laborers, electricians, and architects that is equivalent to work they do in their occupations. Sweat equity may be counted towards the match only if it is not also counted towards a family's equity.

(iii) Donated materials and supplies may be counted towards the match contribution. Materials and supplies need not have been purchased specifically for the program to be included as a match contribution, if the cost to the grantee of the materials and supplies (or, in the case of materials and supplies donated by a different entity than the recipient for use in the program, the fair market value of the materials and supplies) and if the fact that they were used in the program can be documented. The recipient shall maintain a written enumeration of what donated materials and supplies will be used in the program, as well as documentation of their cost or value.

(c) *Other restrictions.* Contributions towards eligible activities that are not directly related to acquisition or rehabilitation of the property may be counted towards the match only to the extent the expenses are incurred before the date the family acquires the homeownership interest, except that contributions for counseling and training of homeowners may be counted if provided within one year of the transfer of ownership interest to the family. For example, contributions for child care services provided after the date of the transfer of ownership interests to the families may not be counted towards the match.

(d) *Exception for Indian housing authorities.* Where the recipient is an IHA and the IHA (acting in that capacity) has not received, and will not receive, amounts under title I of the Housing and Community Development Act of 1974 for the fiscal year in which HUD obligates HOPE grant funds, the match requirements under this section shall not apply.

Section 415. Applications for implementation grants.

(a) *NOFA.* An application for an implementation grant shall be submitted by an applicant in accordance with this notice and the NOFA. The NOFA advises potential applicants how to obtain an application package and establishes deadlines and other requirements for submission of applications. The NOFA also informs each applicant that it may request information and guidance from HUD about program requirements and preparation of the application.

(b) *Application contents.* Each application shall contain the information required by the application package, which shall include at least the following items.

(1) *Request for HOPE implementation grant.* The application shall contain (i) a summary description of the proposed homeownership program; (ii) a description of the personnel necessary to complete the activities; (iii) the amount of the grant requested for each activity. The amount requested, together with any non-Federal contributions, shall be sufficient to carry out all proposed activities.

(2) *Section 8 application.* (i) The application shall contain an application from a PHA/IHA whose jurisdiction includes the proposed eligible property for assistance under section 8 of the 1937 Act, specifying the period during which the assistance will be needed, or a statement by the applicant that no section 8 assistance will be needed.

(ii) The application shall specify whether the assistance is proposed to comply with the replacement housing plan requirement or for nonpurchasing residents for use in another property, or both.

(3) *Qualifications and experience of applicant.* (i) The application shall describe the applicant and contain a statement of its qualifications and experience, including qualifications and experience in providing housing for low-income families. It is particularly important for an applicant that has not received and successfully carried out a planning grant to demonstrate its capacity to carry out the proposed homeownership program. HUD encourages two or more entities to submit an application together. For example, an application submitted by a newly established RMC and an experienced nonprofit organization may greatly increase the likelihood of the success of the proposed homeownership

program. The application shall specify which entity will be the recipient and execute the grant agreement, and include a certification that the entities have entered into a written agreement that delineates their respective roles.

(ii) Where the applicant is an RMC or RC, the application shall demonstrate its ability to manage a public or Indian housing development by having done so effectively and efficiently for a period of not less than three years. Alternatively, the RMC or RC shall demonstrate that it has arranged for the management of the homeownership program by a qualified management entity which has effectively and efficiently managed housing for a period of not less than three years.

(iii) An application from a private nonprofit organization that has applied for tax exempt status under section 501(c) of the Internal Revenue Code of 1986 on or before the date of application may be considered so long as the organization is approved before the effective date of the grant agreement.

(4) *Description of proposed homeownership program.* The application shall describe the proposed homeownership program, demonstrating consistency with all requirements specified in this notice and the application package (see, especially, section 405, Eligible Implementation Grant Activities and Part V, Other Requirements). The application shall specify the activities to be carried out, their estimated costs, and a reasonable schedule for carrying out the activities. See section 715 for requirements for the timely transfer of ownership interests to eligible families. Where no resident entity has been established for the property, the application shall propose establishment of a resident entity (such as an RMC, RC, or cooperative association) promptly after the effective date of the grant agreement.

(5) *Plan.* (i) *Identifying and selecting families.* The application shall contain a plan for identifying and selecting eligible families to participate in the homeownership program. The plan shall—

(A) Establish equitable procedures for selection of eligible families. Except for Indian tribes and IHAs as described in section 505(a)(2), the plan shall also describe activities planned to carry out the applicant's affirmative fair housing marketing responsibilities that apply whenever homeownership opportunities are made available to other than current residents of the property. The plan shall describe the applicant's affirmative fair housing marketing strategy, including specific steps to inform potential applicants and solicit applications from eligible families in the housing market area who are least likely to apply for the program without special outreach. The plan shall require any family determined not to have paid the appropriate amount of tenant contribution under a HUD housing assistance program to resolve any deficiency before being selected for homeownership.

(B) Give a first preference to otherwise qualified current residents and a second preference to otherwise qualified eligible families who have completed participation in an economic self-sufficiency program. The following self-sufficiency programs (and any other Federal, State, or local program proposed by the applicant and approved by HUD as equivalent) qualify: Project Self-Sufficiency, Operation Bootstrap, Family Self-Sufficiency, and JOBS.

(C) Require the recipient to promptly notify in writing any rejected applicant family of the grounds for any rejection, or to require the recipient to require another appropriate entity to do so.

(D) Require each eligible family selected for homeownership to certify at the time it acquires an ownership interest in the unit (or enters into a lease or other conditional ownership agreement providing for acquisition of an ownership interest by the family) that it intends to occupy the unit as its principal residence.

(E) Require each eligible family to agree to occupy the property as its principal residence during the 15-year period from the date it acquires ownership interest in the unit (or enters into a lease or other conditional ownership agreement providing for acquisition of an ownership interest by the family), unless the recipient determines that family is required to move outside the market area due to a change in employment or an emergency situation or the family sells its ownership interest.

(F) Require any eligible family that violates the agreement made under paragraph (b)(5)(i)(E) of this section to pay the amount then due under the promissory note.

(G) Describe the composition of the residents and potential eligible families, including family size and income, and racial, ethnic, and gender characteristics, as required by HUD.

(ii) *Providing relocation.* The application shall describe the proposed relocation activities, in accordance with the requirements of section 735. The plan shall specify the approximate number of families and individuals who are expected to choose to move and the number who will be temporarily relocated during rehabilitation, the estimated costs, the source of funding, the organization that will carry out the relocation if different than the applicant, and other available resources (including, for example, section 8 assistance).

(iii) *Managing sweat equity.* Where applicable, the application shall contain a plan for managing the provision of sweat equity by homebuyers and homeowners, including a description of the anticipated scope of the work, schedule of completion, training of homebuyers and homeowners (and training of others donating labor in connection with sweat equity activity), supervision of the work by a licensed general contractor, and a contingency plan if the sweat equity is not fully provided or the schedule is not met.

(iv) *Providing ongoing training and counseling.* The application shall contain a plan for providing ongoing training and counseling for homebuyers and homeowners.

(6) *Eligible property.* (i) The application shall include a description of the eligible property, including the number of units by size (square footage), bedroom count, bathroom count, preliminary drawings and outline specifications for the proposed rehabilitation, unit plans, and a listing of amenities and services. The application shall also describe the neighborhood and include a map showing the location of the property and the racial and ethnic characteristics of the neighborhood.

(ii) The acquisition or rehabilitation of a public or Indian housing development shall involve acquisition and rehabilitation of all of the units in the development. HUD may permit acquisition or rehabilitation of less than the whole development if the applicant demonstrates to HUD's satisfaction that the acquisition or rehabilitation (or both) of less than all of the development is feasible and will not result in a hardship to the residents of the development who are not included in the homeownership program.

(7) *Housing quality standards plan.* The application shall include a housing quality standards plan describing how the applicant will ensure that—

(i) The unit will be free from any defects that pose a danger to life, health, or safety before transfer of an ownership interest in a unit to an eligible family or execution of a lease with an option to purchase. The recipient shall inspect, or ensure inspection of, each unit to determine it does not pose an imminent threat to the life, health, or safety or current or future residents and that the property has passed recent fire and other applicable safety inspections conducted by appropriate local officials.

(ii) The unit will, not later than 2 years after the transfer to an eligible family, meet minimum housing standards. The recipient shall inspect, or ensure inspection of, each unit to determine it meets the local housing code or, if no local code exists, the housing quality standards established by HUD for the Section 8 Certificate program.

Higher standards may be proposed by the applicant or required by lenders.

(8) *Replacement housing plan.* The application shall contain a replacement housing plan.

(i) Public or Indian housing developments may not be transferred by the PHA/IHA under the HOPE 1 program unless HUD has entered into a binding agreement with the local PHA/IHA to make available to the PHA/IHA Federal funding assistance under paragraphs (b)(8)(i) (A)–(C) and (E) of this section, or another appropriate entity has entered into a binding agreement to make available to the PHA/IHA or other applicant, as appropriate, assistance under paragraphs (b)(8)(i) (D) and (E) of this section, to provide an additional decent, safe, sanitary, and affordable dwelling unit as a replacement for each unit in a public or Indian housing development to be transferred by the PHA/IHA.

Replacement housing may consist of one or more of the following methods—

(A) The development of additional public or Indian housing units by the PHA/IHA in accordance with section 5 of the 1937 Act. The PHA/IHA shall execute an annual contributions contract (ACC) for the additional units before the date of transfer by the PHA/IHA of housing for use under the HOPE 1 program. The additional units under the ACC must have been identified as replacement housing in the development application.

(B) The rehabilitation of vacant public or Indian housing units by the PHA/IHA in accordance with section 14(n)(1) of the 1937 Act. The PHA/IHA shall execute an ACC for the modernization assistance before the date of transfer by the PHA/IHA of housing for use under the HOPE 1 program. The modernization assistance under the ACC to be used to rehabilitate vacant units must have been identified as replacement housing in the application under the Comprehensive Improvement Assistance program or in the comprehensive plan under the Comprehensive Grant program.

(C) The use of 5-year, tenant-based rental assistance under the section 8 Certificate and Housing Voucher programs. The PHA/IHA shall execute an ACC for the additional section 8 certificate or voucher assistance before the date of transfer by the PHA/IHA of housing for use under the HOPE 1 program. The units under the ACC must have been identified as replacement housing in the section 8 application.

(D) The use of a State or local program that is comparable to any of the Federal programs referred to in (A)–(C) as to housing standards, eligibility, and contribution to rent, and provides a term of assistance of not less than five years.

(E) Where the applicant is an RMC, RC, or cooperative association, the acquisition of nonpublicly-owned housing units before the date of transfer by the PHA/IHA of housing units for use under the HOPE 1 program, which the applicant shall operate as rental housing comparable to public or Indian housing as to term of assistance, housing standards, eligibility, and contribution to rent. Funding for such replacement units may be provided from the implementation grant or another source for which the applicant has a firm commitment.

(ii) Assistance that has already been counted as meeting replacement housing requirements under the HOPE 1 program or under sections 5(h), 18, or 21 of the 1937 Act may not be counted again as replacement housing.

(iii) The plan shall include a certification from the PHA/IHA that it concurs with the proposed replacement housing plan and will take all necessary steps to carry it out.

(9) *Match requirements.* (i) The application shall describe, and contain commitments for, the resources that are expected to be contributed towards the match required under section 410, and of any other resources that are expected to be made available in support of the homeownership program. Acceptable evidence that the contribution will be provided shall be included. For example, if 20 years of tax abatement will be counted towards the match, the chief executive officer or appropriate legislative body of the government should submit a copy of the law or other official action documenting this commitment. Cash or other property contributed shall be supported by evidence of a binding commitment by the donor to donate the cash or other property, subject only to approval of the implementation grant and any other necessary conditions approved by HUD.

(ii) If the match requirement does not apply to an IHA in accordance with section 410(d), the application shall contain a certification that the IHA has not received, and will not receive, amounts under title I of the Housing and Community Development Act of 1974 for the fiscal year in which HUD obligates HOPE grant funds.

(10) *Economic development.* The application may contain a plan for economic development activities under the program and shall contain such a plan if the applicant requests a program involving assistance for operating expenses. The application shall demonstrate that the proposed economic development activities under section 405(b)(14) are directly related to the proposed homeownership program, and describe how these activities will promote the self-sufficiency of homebuyers, residents, and homeowners.

(11) *Financing.* (i) The application shall identify and describe the financing proposed for any (A) rehabilitation and (B) acquisition by eligible families of ownership interests in units in the eligible property.

(ii) Financing may include use of the implementation grant to permit transfer of an ownership interest in a unit to an eligible family for less than fair market value or with assisted financing; sale for cash; or other sources of financing (subject to requirements that apply to such other sources), including conventional mortgage loans, mortgage loans insured under title II of the National Housing Act, and mortgage loans under other available programs, such as VA, FmHA, and RTC seller-assisted financing.

(iii) Financing may not involve use of the low income housing tax credit.

(iv) If the applicant proposes that property transferred under this notice be pledged as collateral for debt or otherwise encumbered, the application shall contain sufficient information for HUD to determine that—

(A) The encumbrance will not threaten the long-term availability of the property for occupancy for low-income families, where the program provides for such long-term availability.

(B) Neither the Federal government nor the PHA/IHA will be exposed to undue risks related to action that may have to be taken pursuant to paragraph (b)(11)(iv) of this section (opportunity to cure).

(C) Any debt obligation can be serviced from project income, including operating assistance.

(D) The proceeds of the encumbrance will be used only to meet the housing quality standards (see paragraph (b)(7) of this section) or to make such additional capital improvements as HUD determines to be consistent with the purposes of the HOPE program.

Indian housing development trust land may not be used as collateral.

(v) Recipients and homeowners continue to be subject to paragraphs

(b)(11)(iv) (A)–(D) of this section during the term of the grant agreement.

(vi) The proposed financing shall require that any lender that provides financing in connection with the program shall give the PHA/IHA, RMC, individual owner, or other appropriate entity a reasonable opportunity to cure a financial default before foreclosing on the property, or taking other action as a result of the default (and the financing and conveyance documents shall include such restrictions).

(12) *Affordability.* (i) *Initial affordability*—(A) The application shall demonstrate that the monthly expenditure for principal, interest, taxes, and insurance by an eligible family that is necessary to complete the sale for the initial acquisition of a unit does not exceed 30 percent of the adjusted income of the family, determined in accordance with 24 CFR part 913 or, for Indian housing developments, part 905. As required by the statute, closing costs are included in this cap to the extent they are included in the costs of principal and interest, or are otherwise required to be paid by the homeowner over time after acquisition. It does not make sense to count closing costs paid as a lump sum at closing for purposes of computing a monthly maximum family expenditure. In setting the sales price for acquisition, the applicant shall take into account the need to comply with this affordability standard.

(B) The items subject to the limitations in paragraph (b)(12)(i)(A) of this section, plus estimated utility costs and other monthly housing costs (such as condominium and cooperative monthly fees) shall be at least 25 percent but not more than 35 percent of the adjusted income of the family, determined in accordance with 24 CFR part 913 or 905, as appropriate. The applicant may request HUD to approve a higher percentage cap, where the application demonstrates that a higher cap than 35 percent is necessary to make the project feasible and that the families will be able to afford the higher monthly cost.

(C) In the case of cooperative or condominium ownership, if the monthly charge to the homeowner includes amounts for principal, interest, taxes, insurance, or utilities, the portion of the charge covering these amounts shall be considered for purposes of making the affordability determinations under paragraph (b)(12) of this section.

(ii) *Continued affordability.* The application shall contain a feasible plan for ensuring continued affordability by residents, homebuyers, and homeowners in the eligible property. The plan shall be based on a "proforma" prepared in accordance with paragraph (b)(12)(iii) of this section; however, a proforma is not required under HOPE 1 for single family property that does not involve significant common ownership. The plan shall avoid using financing, such as a mortgage that is not fully amortizing (such as a "balloon" mortgage) or that involves negative amortization, that would impair the continued affordability of the property for eligible families.

(iii) *Proforma.* The plan shall include a "proforma" that sets forth estimated project costs and income over a 20–year period from the date the applicant or other entity acquires the property for transfer to eligible families (or from the effective date of the implementation grant agreement, where the PHA/IHA, will transfer to eligible families). The proforma shall be prepared in accordance with the following requirements and guidelines:

(A) The proforma shall demonstrate that the requirements of paragraph (b)(12)(i) of this section are met and that, for the 20-year period, on an aggregate basis, eligible families shall not be required to pay more than the amounts provided in paragraph (b)(12)(i) (A) and (B) of this section.

(B) The proforma shall include an estimate of the income expected, by each unit size, for the 20-year period, including any homeownership payments, carrying charges, homeowner association payments, and HOPE grant funds for operating assistance (including funding of reserves) and for replacement reserves.

(C) The aggregate income estimated for the property shall equal or exceed the aggregate costs of operating and maintaining the property, including any debt service, property management costs, insurance costs, taxes, funding of operating or replacement reserves, and any other anticipated costs.

(D) Reasonable assumptions shall be used as to all material factors having an impact on the estimates contained in the proforma, including projected vacancy rates, collection rates, income of homebuyers, homeowners, and other residents; changes in such incomes; changes in utilities costs; and income earned on operating and replacement reserves. The applicant shall justify all assumptions used to prepare the proforma. The applicant shall estimate increases in income and operating costs in accordance with guidelines provided by HUD in the application package.

(E) The proposed use of an operating reserve funded from the HOPE grant shall comply with the requirements of § 405(b)(9).

(F) The proforma shall demonstrate that the aggregate income for the property (including amounts provided by HUD for operating assistance or replacement reserves) exceeds aggregate expenses and demonstrates a positive trend in the difference between income and expenses during the 20-year period.

(iv) *Replacement reserves.* The application shall demonstrate that the amount proposed for replacement reserves is adequate, taking into account (A) the estimates covered by the proforma, (B) the size of the grant and the amount of matching contributions, (C) the condition and age of the property and each of its major systems and components (including at least the heating, plumbing and electrical systems and the roof, foundation, windows, exterior walls, and common areas (including the need to repaint)), and (D) other possible replacement needs. The requirement for replacement reserves shall not apply, in the case of single family property, where the applicant demonstrates that the financial status of eligible families is sufficient (taking into account insurance requirements and home maintenance repair capability of the family) so there is not a need for such reserves.

(13) *Sales prices to applicant or other entity.* The application shall specify the terms of the proposed transfer to the entity, if any, that will acquire the property for sale to eligible families. If the applicant is a PHA/IHA that proposes to sell directly to eligible families, paragraph (b)(13) of this section shall not apply. The necessary information is covered by paragraph (b)(14) of this section.

(14) *Sales prices and terms of sale to eligible families; form of ownership.*

(i) The application shall contain estimated sales prices and terms of sale to eligible families. The application shall also specify the type or types of homeownership to be used, including cooperative ownership (including limited equity cooperative ownership), fee simple ownership (including condominium ownership), or another form of ownership proposed and justified by the applicant and approved by HUD. The application shall contain a certification that the proposed type of homeownership is consistent with any applicable State and local, or tribal, law. For example, if the applicant is a cooperative that proposes to own the property, it must have the legal ability to own the particular property.

(ii) The proposed program shall require each eligible family to make a down payment towards the cost of acquisition at closing. An applicant may permit a family to meet its down

payment obligation through "sweat equity."

(iii) An eligible family may transfer amounts credited to it under other HUD homeownership programs (including Turnkey III and Mutual Help) to meet down payment obligations under the HOPE program, if it is purchasing the same unit it has occupied under the other HUD homeownership program.

(iv) See section 110(k) for provisions governing the use of single family FHA mortgage insurance.

(15) *Resale restrictions, if any.* The application shall contain any proposed restrictions on the resale of units by initial or subsequent homeowners under the homeownership program (see section 720(a)(1)(ii)). The required restrictions set forth in section 720 need not be restated.

(16) *Management entity.* The application shall identify and describe the entity that will operate and manage the property, and, if the PHA or IHA will transfer the property within six months from the effective date of the grant agreement, contain a copy of the proposed contract. Where homeowners will have full responsibility (as is expected in scattered site, fee simple ownership arrangements), this requirement will only cover the period, if any, until the homeowners become fully responsible.

(17) *CHAS certification.* (i) The application shall contain a certification by the public official, or his or her authorized representative, who submits the CHAS that the proposed activities (including activities related to the replacement housing plan) are consistent with the approved CHAS of the State or unit of general local government within which the eligible property is located.

(ii) Paragraph (b)(17)(i) of this section shall not apply to an application submitted by an Indian tribe or IHA. Indian tribes and IHAs are not included in the definition of a "jurisdiction," the entity charged with submitting a CHAS. HUD has concluded that Indian tribes and IHAs need not submit a CHAS and need not submit a certification of consistency with a housing strategy.

(18) *Equal opportunity certifications.* (i) The application shall contain—

(A) A certification that the applicant will comply with the requirements of the Fair Housing Act, title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973; and the Age Discrimination Act of 1975, and will affirmatively further fair housing; or

(B) In the case of an application from an Indian tribe or IHA, under the circumstances described in section 505(a)(2) of this notice, a certification that the applicant will comply with the Indian Civil Rights Act (25 U.S.C. 1301 *et seq.*), section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

(ii) The application shall contain a statement from the applicant (A) whether or not a desegregation order, agreement, or plan that applies to the applicant is in effect or known to the applicant to be under consideration; (B) that the applicant is not in violation of any existing desegregation order, compliance agreement, or voluntary agreement, or a statement describing the circumstances of the violation; and (C) describing any potential impact the proposed homeownership program may have on implementing any existing or pending order, agreement, or plan.

(19) *Resident interest.* (i) *RMC or RC is an applicant.* Where the applicant (or one of the applicants) is an RMC or RC, the application shall contain a board resolution from the RMC or RC supporting the application.

(ii) *RMC or RC exists for the eligible property.* Where the applicant (or one of the applicants) is not an RMC or RC for the eligible property and there is an RMC or RC for the eligible property, the application shall contain a board resolution from the RMC or (if there is no RMC) the RC for the eligible property if any, that it is interested in a homeownership program and that the applicant is submitting the application on behalf of the RMC or RC for the eligible property.

(iii) *Survey of resident interest and marketability.* In all cases, the application shall also contain a survey conducted by the applicant of resident interest in homeownership and marketability of the units, which shall be conducted in accordance with procedures set forth in the application package. If the development is less than 50 percent vacant, at least 50 percent of the households of the eligible property must indicate that they are interested in exploring the possibility of homeownership. If the development is 50 percent or more vacant, the survey must indicate that there are at least 1.2 interested eligible families for each unit in the proposed property that is not occupied by a family interested in homeownership.

(20) *Public hearing.* The application shall contain documentary evidence that the applicant held at least one public hearing regarding the sale of the eligible property proposed for use under the program, with a summary of the views expressed by residents and other members of the public and the response by the applicant.

(21) *Plan for use of certain program income.* The application shall contain a plan for use of proceeds from sales to eligible families and amounts families may not retain upon resale. The plan shall provide for uncommitted program income to be spent before additional grant amounts are drawn down by the recipient.

(22) *Nondisplacement; participation by residents.* The application shall contain a certification by the applicant that no person has been or will be displaced from his or her dwelling as a direct result of a homeownership program under this notice. This does not preclude termination of tenancy for violation of the terms of occupancy of a unit. Each resident of an eligible property shall be given an opportunity to become a homeowner under this program if the resident qualifies as an eligible family and meets other program requirements.

(23) *Nonduplication of funding.* The application shall contain a certification that the applicant has not and will not receive assistance from the Federal government, a State, or a unit of general local government, or any agency or instrumentality thereof, for activities for which funding is requested in the application.

(24) *Disclosures required by reform act.* Section 102(b) of the HUD Reform Act, Public Law 101–235 (December 15, 1989) requires disclosure of other information concerning other government assistance to be made available with respect to the program and parties with a pecuniary interest in the homeownership program, and submission of a report on expected sources and uses of funds to be made available for the program. Each application shall include the information required by 24 CFR part 12, subpart C, the regulation that implements section 102(b) of the Reform Act. An implementing notice for 24 CFR part 12, subpart C, is being published in the **Federal Register**. Applicants shall use the form and guidance contained in that notice to make the required disclosures.

(c) *Screening by HUD.* (1) HUD shall screen each application submitted on or before the deadline set forth in the NOFA to determine whether it is complete, is internally consistent, and contains correct computations. Where HUD determines an application is deficient in one or more of these areas, it shall notify the applicant in writing and give it an opportunity to correct the deficiencies in its application. However, the applicant may not substantially revise the application, such as by substituting another eligible property or

applicant or changing other fundamental features of the program, because that would not be fair to other applicants. The notification shall require applicants to submit additional or correct material so it is received in the appropriate HUD office no later than close-of business on the 14th calendar day after the date of the notification to the applicant giving it an opportunity to modify its application. HUD may not extend this deadline for actual receipt of the material for any reason. HUD shall not consider further any applications that do not meet one of the tests in the first sentence of paragraph (c)(1) of this section, after the opportunity, if any, to submit additional or corrected material, or fail to comply with other program requirements.

(2) The purpose of this procedure is to increase the number of approvable applications so viable homeownership opportunities may be developed at the earliest possible time, while giving each applicant an equal opportunity to receive HUD assistance and correct deficiencies. HUD anticipates that many applicants will be relatively new and may need this additional opportunity to perfect their applications.

(Approved by the Office of Management and Budget under control number 2577–0132.)

Section 420. Threshold review.

HUD shall review each application that qualifies for additional consideration under the screening procedures in section 415(c). HUD shall not consider further any application that fails to meet one or more of the following additional threshold criteria—

(a) The application shall demonstrate that the affordability standards in section 415(b)(12)(i) can be met and the plan for continued affordability in section 415(b)(12)(ii) is feasible. HUD shall take into account the proposed cost of operating the property after eligible families become homeowners; the adequacy of counseling and training of homebuyers, residents, and homeowners; and the extent to which the proposed self-sufficiency activities assure continued affordability by homeowners.

(b) The proposed costs of eligible activities are within applicable cost limitations.

(c) The applicant's certification of compliance with equal opportunity and related requirements and the statement concerning desegregation orders, compliance agreements, and voluntary agreements are consistent with facts known to HUD, and the performance of the applicant is satisfactory or any problems are being satisfactorily resolved.

(d) The application shall be submitted by an eligible applicant for eligible property.

(e) The eligible property specified in the application shall be located within the boundaries of a jurisdiction—

(1) Which is participating jurisdiction under the HOME program established under title II of NAHA; or

(2) On behalf of which the agency responsible for affordable housing has submitted a housing strategy or plan.

(f) The proposed program provides that at least 66 percent of units will be acquired by eligible families (or such higher percentage as may be required under State, local, or tribal law governing cooperative associations or other form of homeownership used under the program).

Section 425. Rating, ranking, and selection of applications.

(a) *Rating.* HUD shall review each application that it determines to meet threshold requirements and assign it points in accordance with the following selection criteria—

(1) *Capability.* The ability of the applicant to develop and carry out the proposed homeownership program, taking into account the quality of any related ongoing program of the applicant. In assigning points for this criterion, HUD shall consider evidence in the application demonstrating—

(i) The capability of the applicant to handle financial resources, demonstrated through such evidence as previous experience and existing financial control procedures, or by an explanation of how such capability will be obtained—10 points.

(ii) The applicant has direct experience in working with or representing residents of public or Indian housing developments—5 points.

(iii) If rehabilitation is proposed, the capability of the applicant to manage the proposed rehabilitation, demonstrated through previous experience in managing rehabilitation or construction, or by an explanation of how such capability will be obtained—5 points.

(iv) If rehabilitation is proposed, the extent to which an established resident-based organization will undertake substantial program management responsibilities in implementing the proposed homeownership program—5 points.

If rehabilitation is not being proposed, no points shall be assigned for subcriteria (iii) and (iv) and the points for subcriteria (i) and (ii) shall be increased to 15 and 10, respectively.

(v) A demonstration that the applicant or joint applicant is an RMC or RC—5 points.

Maximum points for this criterion (1): 30 points.

(2) *Local support.* HUD shall assign points for this criterion based on the extent to which funds for activities that do not qualify as eligible activities will be provided in support of the homeownership program, considering the extent to which the additional improvements, amenities, and services enhance the homeownership program.

Maximum points for this criterion (2): 5 points.

(3) *Resident and homebuyer interest and marketability.* The extent of resident and homebuyer interest in, and marketability of, the development of a homeownership program for the eligible property.

(i) Where the development is less than 50 percent vacant, HUD shall assign points based on the percentage of current residents of the property interested in participating in the proposed homeownership program, based on a survey conducted by the applicant and submitted to HUD as part of the application.

(A) If 85 percent or more of the residents are interested: 10 points;

(B) If 66–84.99 percent of the residents are interested: 5 points; or

(C) If 50–65.99 percent of the residents are interested: 0 points.

(ii) Where the development is 50 percent or more vacant, HUD shall assign points based on the number of eligible families interested in participating in the proposed homeownership program, based on a survey conducted by the applicant and submitted to HUD as part of the application. The purpose of the survey is to determine if there is a sufficient pool of families eligible to purchase units in the proposed eligible property.

(A) If there are 2.0 or more interested eligible families for each unit in the proposed property not occupied by a family interested in homeownership: 10 points;

(B) If there are 1.5–1.99 interested eligible families for each unit in the proposed property not occupied by a family interested in homeownership: 5 points.

(C) If there are 1.2–1.49 eligible families: 0 points. Maximum points for this criterion (3): 10 points.

(4) *Quality and feasibility of program.* The quality and feasibility of the proposed homeownership program, including the viability of the economic self-sufficiency plan. In assigning points for this criterion, HUD shall consider

evidence in the application demonstrating—

(i) The overall soundness and comprehensiveness of the homeownership program—5 points.

(ii) The extent to which the applicant (or other appropriate entity identified in the application) is currently implementing effective homebuyer screening procedures, homebuyer supportive services, and other management practices intended to reduce the number of delinquencies in rent payments or foreclosures, or the extent to which the plan covering these activities contained in the application will be successful—10 points.

(iii) The extent to which proposed economic development activities will result in continued affordability of the property after assistance for operating expenses is no longer available—10 points.

If no assistance for operating assistance is being required and if the application demonstrates that no economic development assistance is needed, no points shall be assigned under subcriterion (iii), and the points for subcriteria (i) and (ii) shall be increased to 10 and 15, respectively.

Maximum points for this criterion (4): 25 points

(5) *Relationship to CHAS.* Whether the approved CHAS for the jurisdiction within which the eligible property is located includes homeownership as one of the general priorities identified pursuant to section 105(b)(7) of NAHA. This criterion shall not be used to rate an application submitted by an Indian tribe or IHA. The maximum score for such an application will be 95. The percentage of points earned by an applicant, based on its maximum point total of 95, will be multiplied by 100 (the maximum number of points for other applicants) to determine the points for purposes of ranking.

Points for this criterion (5): 5 points.

(6) *Efficient use of grant.* The extent to which the proposed program will result in the lowest total cost per unit in comparison to other applications. Factors that will affect the cost will include the number of non-purchasing residents in the property and the need to use the implementation grant to fund the replacement housing plan.

Maximum points for this criterion (6): 10 points.

(7) *Suitability of the property.* The suitability of the eligible property for homeownership. Suitability for homeownership shall be determined based on—

(i) Proximity or accessibility of the property to places of employment, shopping, schools, medical facilities, transportation, places of worship, recreational facilities, and other necessary services for the families under the program—3 points;

(ii) Whether the surrounding neighborhood is free from conditions which are seriously detrimental to the quality of life; substandard dwellings or other undesirable elements must not predominate, unless the undesirable conditions affecting the property are being actively mitigated—3 points; and

(iii) Whether the structure type and bedroom configuration are (or will be after any proposed rehabilitation) appropriate for the proposed homeownership program, taking into account that no residents in occupancy on the date HUD approves an implementation grant may be evicted by reason of a homeownership program—4 points.

The review will be made in the context of where public or Indian housing is typically located.

Maximum points for this criterion (7): 10 points.

(8) *MBE/WBE goals.*

(i) The extent to which the applicant demonstrates a firm commitment to promoting the use of minority business enterprises and women-owned businesses, especially resident-owned businesses. For example, the applicant has used such businesses in the past, has set forth specific affirmative steps it will take to ensure that such businesses have an equal opportunity to obtain and compete for contracts, or both. These steps may include the steps outlined at 24 CFR 85.36(e) and 570.506(g)(6), but may not include awarding contracts solely or in part on the basis of race or gender. See section 505(d) for the legal basis for this criterion.

(ii) In the case of applications submitted by Indian tribes or IHAs, the requirements of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450e(b), apply. Accordingly, for such applicants, points for this factor shall be assigned based on the extent to which the applicant demonstrates a firm commitment to promoting the use of minority business enterprises and women-owned businesses, to the maximum extent consistent with, but not in derogation of, the Indian Self-Determination and Education Assistance Act.

Maximum points for this criterion 8(i) or (ii), as applicable: 5 points.

(9) *Appreciable reduction of public or Indian housing in the locality.* HUD shall deduct points for an application that would appreciably reduce the public or Indian housing stock in a locality under the jurisdiction of the PHA for the eligible property. In determining the number of public or Indian housing units for this purpose, the number of units proposed for homeownership under the application shall be adjusted by subtracting the number to be replaced through the development of additional public or Indian housing or the rehabilitation of vacant public or Indian housing units, since, in those cases, the public and Indian housing stock is not being reduced. Points shall be deducted in accordance with the following standards:

(i) An application shall have no points deducted from its score if the sale proposed by the application reduces the availability of public or Indian housing by less than 15%.

(ii) An application shall have 5 points deducted from its score if the sale proposed by the application reduces the availability of public or Indian housing by 15% or more but less than 33%.

(iii) An application shall have 10 points deducted from its score if the sale proposed by the application reduces the availability of public or Indian housing by 33% or more but less than 50%.

(iv) An application shall have 12 points deducted from its score if the sale proposed by the application reduces the availability of public or Indian housing by 50% or more but less than 66%.

(v) An application shall have 15 points deducted from its score if the sale proposed by the application reduces the availability of public or Indian housing by 66% or more. Total number of points—100 points.

HUD intends to amend the rating system in the final rule by providing for 5 bonus points if an applicant has been a successful planning grant recipient. This will reward applicants who have already been developing HOPE 1 homeownership programs. Comments are particularly invited on whether HUD should include this change in the final rule.

(b) *Environmental review.* (1) HUD shall conduct an environmental review of the applications.

(2) In conducting the environmental review, HUD shall assess the environmental effects of each application in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) and HUD's implementing regulations at 24 CFR part 50. Any application that requires an environmental impact statement (generally, those that HUD determines would have a significant impact on the human environment, in accordance with the environmental assessment

procedures at 24 CFR part 50, subpart E) shall not be eligible for funding.

(3) As a result of the environmental review, HUD may find that it cannot approve an application unless adequate measures to mitigate environmental impacts are taken. (See, for example, 24 CFR part 51.) Accordingly, HUD may adjust the rating scores of such applications, based on the anticipated time delays or excessive costs in adopting appropriate impact mitigation. For example, the feasibility of the program or the availability of an eligible property may be harmed by any significant delay.

(4) The environmental review often will reveal information not contained in the application that may have relevance to the selection process. HUD shall make further adjustments to the ratings, where appropriate, based on the information revealed during the environmental review.

(c) *Ranking and selection to assure national geographic diversity.* (1) After assigning points to each application under paragraph (a) of this section, HUD shall rank the applications in order. HUD shall examine the ranking and, where it determines that applications falling below a certain point total are not suitable or not feasible for homeownership under the program, it may establish a minimum number of points for an application to be selected. HUD shall then select the highest ranking application from each of the 10 HUD Regions. If none of the 10 applications involves an Indian housing development and sufficient funds are available, the highest ranking application involving an Indian housing development shall also be approved.

(2) HUD shall then select the highest ranking remaining applications, without regard to their location.

(3) If two or more applications have the same number of points, the application submitted by an RMC or RC shall be selected. If there is still a tie, the application with the most points for capability shall be selected. If there is still a tie, the application with the most points for efficiency shall be selected.

(4) When the amount remaining after funding as many of the highest ranking applications as possible is insufficient for the next highest ranking application, HUD shall determine if it is feasible to fund part of the application, with the remainder to be funded "off the top" from possible future funding rounds. If so, that application shall be funded. If not, HUD shall make the same determination for the next highest application or applications. Any remaining amounts shall be used in accordance with paragraphs (f) and (g) of this section.

(5) Procedural errors discovered after initial ratings but before notification of applicants shall be corrected and rankings revised. Procedural errors discovered after notification of approved applicants which, if corrected, would result in approval of an application which was not approved will be corrected by funding the application from any unused amounts or "off the top" from amounts available for implementation grants in the next funding round.

(d) *Reduction in requested grant amounts.* HUD shall approve an application for an amount lower than the amount requested or adjust line items in the proposed budget within the amount requested (or both) if it determines the amount requested for one or more eligible activities is unreasonable or unnecessary or does not otherwise meet applicable cost limitations established for the program.

(e) *Notification of approval or disapproval.* (1) *Notification of applicants.* After completion of the ranking and selection of applications, but no later than six months after the date of submission of the application, HUD shall notify the selected applicants and the applicants that have not been selected, in writing. The amount of the required match may be adjusted when HUD approves an application, to reflect the approved grant amount.

(2) *Conditional approval of section 8 applications.* HUD may approve the HOPE grant application with a statement that the application for the section 8 certificate or housing voucher assistance (or both) is conditionally approved, subject to the availability of appropriations in subsequent fiscal years. This will permit HUD to use section 8 authority for other purposes until it is needed for the HOPE 1 program for nonpurchasing residents or for replacement housing.

(f) *Use of remaining amounts to fund HOPE 1 planning grants.* Any amounts available to fund implementation grants that are not needed because there are insufficient approvable applications shall be used to fund the highest ranked, unfunded planning grant applications.

(g) *Insufficient approvable applications.*

If funds remain after HUD approves all approvable applications, including planning grant applications, as provided in this notice, HUD may publish a NOFA inviting planning grant or implementation grant applications, or both, in accordance with this notice, or invite applicants who submitted applications that could not be funded to submit amended planning grant or implementation grant applications in accordance with this notice within a deadline specified in the invitation. Any remaining amounts shall be added to amounts available for subsequent funding rounds.

V. Other Requirements

Section 501. Flood insurance and coastal barriers resources act.

(a) *Flood insurance.* Pursuant to the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128) HUD will not approve applications for implementation grants providing financial assistance for acquisition or rehabilitation of properties located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless—

(1) The community in which the area is situated is participating in the National Flood Insurance program (see 44 CFR Parts 59 through 79), or less than one year has passed since FEMA notification regarding such hazards; and

(2) Flood insurance is obtained as a condition of approval of the application.

(b) *Coastal barriers resources act.* Pursuant to the Coastal Barrier Resources Act (16 U.S.C. 3601), HUD will not approve applications for planning or implementation grants for properties in the Coastal Barrier Resources System.

Section 505. Nondiscrimination and equal opportunity.

(a) *Fair housing requirements.* (1) The requirements of the Fair Housing Act (42 U.S.C. 3601–19) and implementing regulations at 24 CFR part 100, part 109, and part 110; Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1958–1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; and Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1 shall apply.

(2) The Indian Civil Rights Act (25 U.S.C. 1301 *et seq.*) applies to tribes when they exercise their powers of self-government. Thus, it is applicable in all cases when an IHA has been established by exercise of such powers. In the case of an IHA established pursuant to State law, the applicability of the Indian Civil Rights Act shall be determined on a case-by-case basis. Developments subject to the Indian Civil Rights Act shall be developed and operated in compliance with its

provisions and all implementing HUD requirements, instead of title VI and the Fair Housing Act and their implementing regulations.

(b) *Discrimination on the basis of age or handicap.* The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8 shall apply.

(c) *Employment opportunities.* (1) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects) shall apply. In addition, Executive Order 11246 (3 CFR 1964–1965 Comp., p. 339) (Equal Employment Opportunity) and implementing regulations at 41 CFR part 60 shall apply.

(2) In the case of Indian tribes and IHAs, the requirements of the Indian Self-Determination and Education Assistance Act shall also apply (see 25 U.S.C. 450e(b); 24 CFR 905.165 (a) and (b) and 905.360); compliance with Executive Order 11246 and 41 CFR part 60 shall be to the maximum extent consistent with, but not in derogation of, the Indian Self-Determination and Education Assistance Act (see 24 CFR 905.170(b) and 905.360).

(d) *Minority and women's business enterprises.* The requirements of Executive Orders 11625, 12432, and 12138 shall apply. Consistent with HUD's responsibilities under these Orders, recipients must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities. In the case of applications submitted by Indian tribes or IHAs, recipients' efforts must be consistent with, but not in derogation of, the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450e(b).

(e) *Affirmative fair housing marketing.* The recipient shall adopt a plan for informing and soliciting applications from people who are least likely to apply for the program without special outreach, consistent with the affirmative fair housing marketing requirements. See 24 CFR part 108. This paragraph shall not apply to Indian tribes and IHAs, as described in paragraph (a)(2) of this section.

(f) *Authority for collection of racial, ethnic, and gender data.* HUD requires submission of racial, ethnic, and gender data under this notice pursuant to section 562 of the Housing and Community Development Act of 1987, section 309 of the United States Housing Act of 1937, and section 808(e)(6) of the Fair Housing Act.

Section 510. OMB circulars.

(a) The policies, guidelines, and requirements of OMB Circular Nos. A–87 (Cost Principles Applicable to Grants, Contracts and Other Agreements with State and Local Governments) and 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments) apply to the award, acceptance, and use of assistance under the program by governmental entities, and to the remedies for non-compliance, except where inconsistent with the provisions of NAHA, other Federal statutes, or this notice. Circular Nos. A–110 (Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations) and A–122 (Cost Principles Applicable to Grants, Contracts and Other Agreements with Nonprofit Institutions) apply to the acceptance and use of assistance by private nonprofit organizations, except where inconsistent with the provisions of NAHA, other Federal statutes, or this notice. Recipients are also subject to the audit requirements of OMB Circular A–128 implemented at 24 CFR part 44, and OMB Circular A–133 (Audits of Institutions of Higher Learning and Other Nonprofit Institutions).

(b) Copies of OMB Circulars may be obtained from E.O.P. Publications, room 2200, New Executive Office Building, Washington, DC 20503, telephone (202) 395–7332 (this is not a toll-free number). There is a limit of two free copies.

Section 515. Drug-free workplace.

Applicants shall certify that they will provide a drug-free workplace, in accordance with the Drug-free Workplace Act of 1988 and HUD's implementing regulations at 24 CFR part 24, subpart F.

Section 520. Anti-lobbying certification.

(a) Section 319 of Public Law 101–121 prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government. A government-wide common rule governing the restrictions on lobbying was published as an interim rule on February 26, 1990 (55 FR 6736) and supplemented by a notice published June 15, 1990 (55 FR 24540). For HUD, this rule is found at 24 CFR part 87. The rule requires applicants for and recipients of assistance exceeding $100,000 to certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance. The rule also requires disclosures from applicants and recipients if nonappropriated funds have been spent or committed for lobbying activities if those activities would be prohibited if paid with appropriated funds. The law provides substantial monetary penalties for failure to file the required certification or disclosure.

(b) This section shall not apply to Indian tribes or IHAs. Indian tribes, tribal organizations, or any other Indian organization with respect to expenditures specifically permitted by other Federal law are not covered by the definition of "person" in 24 CFR part 87.

Section 525. Debarred or suspended contractors.

The provisions of 24 CFR part 24 apply to the employment, engagement of services, awarding of contracts, subgrants, or funding of any recipients, or contractors or subcontractors, during any period of debarment, suspension, or placement in ineligibility status.

Section 530. Conflict of interest.

(a) In addition to the conflict of interest requirements in OMB Circular A–110 [2] and 24 CFR part 85, no person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient and who exercises or has exercised any functions or responsibilities with respect to assisted activities, or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter, except that a resident of an eligible property may acquire a homeownership interest.

(b) HUD may grant an exception to the exclusion in paragraph (a) of this section on a case-by-case basis when it determines that such an exception will serve to further the purposes of the HOPE program and the effective and efficient administration of the local homeownership program. An exception may be considered only after the applicant or recipient has provided a disclosure of the nature of the conflict,

[2] See section 510(b) concerning the availability of OMB Circulars

accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made and an opinion of the applicant's or recipient's attorney that the interest for which the exception is sought would not violate State or local laws. In determining whether to grant a requested exception, HUD shall consider the cumulative effect of the following factors, where applicable:

(1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the local homeownership program that would otherwise not be available;

(2) Whether an opportunity was provided for open competitive bidding or negotiation;

(3) Whether the person affected is a member of a group or class intended to be the beneficiaries of the activity and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(4) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decisionmaking process, with respect to the specific activity in question;

(5) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (b) of this section;

(6) Whether undue hardship will result either to the applicant, recipient, or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(7) Any other relevant consideration.

Section 535. Labor standards.

Pursuant to section 12 of the 1937 Act, Davis-Bacon or HUD-determining prevailing wage rates (or both) shall apply to activities under the HOPE 1 program. The wage rate requirements do not apply to individuals who perform services for which they volunteered; do not receive compensation for those services or are paid expenses, reasonable benefits, or a nominal fee for the services; and are not otherwise employed in the work involved. In addition, if other Federal programs are used in connection with the HOPE 1 homeownership program, labor standards requirements apply to the extent required by such other Federal programs. For example, if the Public and Indian Housing Modernization or CDBG program is used in connection with the program, the labor standards requirements of those programs would apply to the extent required by them.

Section 540. Lead-based paint testing and abatement.

Any residential property assisted under the HOPE program established under this notice constitutes HUD-associated housing for the purpose of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, *et seq.*) and is, therefore, subject to 24 CFR part 35. Unless otherwise provided, recipients shall be responsible for testing and abatement activities.

Section 545. Requirements applicable to religious organizations.

Where the applicant is, or proposes to contract with, a primarily religious organization, or a wholly secular organization established by a primarily religious organization, to provide, manage, or operate housing under the program, the organization shall undertake its responsibilities under the homeownership program in accordance with the following principles:

(a) It will not discriminate against any employee or applicant for employment under the program on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;

(b) It will not discriminate against any person applying for housing on the basis of religion and will not limit such housing or give preference to persons on the basis of religion;

(c) It will provide no religious instruction or counseling, conduct no religious services or worship (which term does not include voluntary, non-denominational prayer before meetings), engage in no religious proselytizing, and exert no other religious influence in the provision of assistance under the homeownership program.

VI. Grant Agreement—Planning and Implementation Grants

Section 601. Grant agreement.

After HUD approves an application for a planning grant or an implementation grant, it shall enter into a grant agreement with the recipient setting forth the amount of the grant and applicable terms and conditions, including sanctions for violation of the agreement. Among other things, the grant agreement shall provide that the recipient agrees:

(a) To carry out the program in accordance with the provisions of this notice, applicable law, the approved application, and all other applicable requirements;

(b) To comply with such other terms and conditions, including recordkeeping and reports, as HUD may establish for the purposes of administering, monitoring, and evaluating the program in an affective and efficient manner;

(c) That HUD may withhold, withdraw, or recapture any portion of a grant, terminate the grant agreement, or take other appropriate action authorized under the grant agreement, if HUD determines that the recipient is failing to carry out the approved homeownership program in accordance with the terms of the approved application and this notice, including failure to provide the contribution towards the match.

VII. Implementation of Planning and Implementation Grants

Section 701. Implementation; family contribution; performance standards.

(a) After execution of its planning or implementation grant agreement, the recipient shall carry out the planning grant or implementation grant activities in accordance with its approved application. HUD shall establish procedures governing the drawdown of funds under grant agreements.

(b) The total monthly amount payable by a family may not be less than the amount determined in accordance with 24 CFR part 905 or 913, as appropriate, if operating assistance under the program is being provided for the family. The amount payable by a family shall be adjusted at least annually in accordance with the requirements of those regulations so long as operating assistance is being provided under the program for the family.

(c) HUD intends to establish performance criteria in the final rule for the program and invites comments on what the standards should be.

Section 705. Resident selection procedures during rental phase (if any).

During the interim period, if any, when the property continues to be operated and managed as rental housing, the recipient shall utilize written resident selection policies and criteria that are consistent with the public or Indian housing program and approved by HUD as consistent with the purpose of improving housing opportunities for low-income families. The policies shall provide that the recipient (or another appropriate entity) (a) notify any rejected applicant in writing of the grounds for rejection; (b) comply with applicable affirmative fair housing marketing requirements; (c) specify the basis for resident selection, which shall give a preference to applicants interested in becoming homeowners who have completed participation in an economic self-sufficiency program (see section

415(b)(5)(i)(B)) and other applicants interested in becoming homeowners and shall provide for a waiting list; and (d) verify family income of applicants and check the credit and rental history of applicants. The resident selection policies and criteria may not provide for the recipient (or other entity) to take into account whether an applicant receives public assistance or receives Federal, State, or local housing assistance, but may take into account such assistance, and all other income and other resources, in determining the amount a family will pay under the program. The recipient may adopt the public housing or Indian housing occupancy handbook, with any appropriate modifications (including, at least, establishing a priority for applicants interested in homeownership).

Section 710. Social security numbers.

As a condition of eligibility for homeownership under this notice—

(a) At the time a family applies for homeownership, the recipient (or other appropriate entity) shall require the family to meet the requirements for the disclosure and verification of social security numbers, as provided by 24 CFR part 750; and

(b) The recipient (or other appropriate entity) shall require the family to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 760.

Section 715. Timely homeownership.

(a) *Deadline for transfer.* Recipients shall transfer ownership interests in the property to eligible families within a reasonable period of time.

(b) *Definition of reasonable period of time.* (1) Where applicable, the PHA/IHA shall transfer the property to the recipient (or other entity) within one year of the effective date the implementation grant agreement. Where the development contains 50 units or fewer, transfer of ownership interests to eligible families within two years of the date the entity that acquires the development (or the effective date of the implementation grant agreement where the PHA/IHA is that entity) shall be considered reasonable. Where the development contains more than 50 units, transfer of ownership interests to eligible families within five years shall be considered reasonable.

(2) An applicant may propose in its application a longer period for transferring ownership interests to eligible families, and submit a justification. After application approval, HUD may approve a request for a longer deadline for transfer to eligible families, where it determines that unanticipated, extraordinary circumstances exist. Subject to the availability of funding, HUD may consider making additional section 8 assistance available to residents in the property where necessary to maintain its feasibility during the time the causes for the delay are being corrected. This could become necessary if residents who intended to purchase change their minds and need assistance to afford the rents in the property.

Section 720. Restrictions on resale by initial homeowners.

(a) *In general.* (1) *Transfer Permitted*—(i) A homeowner may transfer the homeowner's ownership interest in the unit, subject only to the right to purchase under paragraph (a)(2) of this section, the requirement for the purchaser to execute a promissory note, if required under paragraph (b) of this section, and the limitation on the amount of sales proceeds a family may retain upon sale within the first six years, as required under paragraph (c) of this section. See paragraphs (b) and (c) of this section for the rules for determining the amount homeowners may retain from the sales proceeds.

(ii) Notwithstanding paragraph (a)(1)(i) of this section, an applicant may propose in its application, and HUD may approve based on a review of the individual circumstances, additional reasonable restrictions on the resale of units under the program.

(2) *Right to purchase.*

(i) Where an RMC, RC, or cooperative has jurisdiction over the unit, it shall have the prior right to purchase the ownership interest in the unit from the initial homeowner for the amount specified in a firm contract between the homeowner and a prospective buyer. The RMC, RC, or cooperative association shall have 10 days after receiving notice of the firm contract to decide whether to exercise its right and 60 additional days to complete closing of the purchase.

(ii) If no RMC, RC, or cooperative has jurisdiction over the unit or no such entity elects to purchase from the initial homeowner and if the prospective buyer is not a low-income family, a PHA/IHA with jurisdiction for the area in which the unit is located or the recipient, as specified in writing at the time the family acquires ownership interest in the unit, shall have the prior right to purchase the ownership interest in the unit for the amount specified in the firm contract. The PHA/IHA or recipient shall have 10 days after receiving notice of the firm contract to decide whether to exercise its right and 60 additional days to complete closing of the purchase.

(iii) Where an RMC, RC, cooperative, PHA/IHA, or recipient exercises a right to purchase, it shall resell the unit to an eligible family promptly. If the PHA/IHA exercises a right to purchase shares representing a unit in a cooperative, because the cooperative did not have sufficient money to do so, the PHA/IHA shall give the cooperative another chance to purchase the shares before selling it to an eligible family.

(b) *Promissory note.* (1)(i) At closing, the initial homeowner shall execute a nonamortizing, nonrecourse, non-interest-bearing promissory note, in a form acceptable to HUD, equal to the difference, if any, between the fair market value of the unit and the purchase price, payable to the PHA/IHA, recipient, or other entity designated in the approved homeownership plan, together with a mortgage securing the obligation of the note. In determining the amount of the promissory note and for that purpose only, the purchase price shall be adjusted by deducting all substantial amounts of assistance that would result in an undue profit to the family if it were to sell the property at the beginning of the 7th year of homeownership. (See paragraph (c) of this section for restrictions during the first six years.) For example, if the family received down payment assistance equal to 10 percent or more of the fair market value of the unit, a promissory note shall be required.

(ii)(A) With respect to a sale by an initial homeowner, the note shall require payment upon sale by the initial homeowner, to the extent proceeds of the sale remain after paying off other outstanding debt secured by the property that was incurred for the purpose of acquisition or property improvement, paying any other amounts due in connection with the sale (such as closing costs and transfer taxes), and paying the family the amount of its equity in the property, computed in accordance with paragraph (c) of this section.

(B) With respect to a sale by an initial homeowner after the first six years after acquisition, through the 20th year, the amount payable under the note shall be reduced by 1/16s of the original principal amount of the note for each full month of ownership by the family after the end of the sixth year. The homeowner may retain all other proceeds of the sale.

(C) For example, if the family sells at the end of the 13th year of homeownership (at the half-way point

between the end of the sixth year and the end of the 20th year of ownership), $^{84}/_{168}$ (or one-half) of the note would be forgiven, and only half of the principal amount of the note would be payable from sales proceeds. The family could retain all remaining proceeds, including proceeds due to normal market value increases in the value of the property. If the initial homeowner retains ownership for 20 or more years, the entire amount of the note would be forgiven.

(2)(i) Where a subsequent purchaser during the 20-year period, measured by the term of the initial promissory note, purchases the property for less than the current fair market value, the purchaser shall also execute at closing such a promissory note and mortgage, for the amount of the discount (but no more than the amount payable at the time of the sale on the promissory note by the seller). The term of the promissory note shall be the period remaining of the original 20-year period. The note shall require payment upon sale by the subsequent homeowner, to the extent proceeds of the sale remain after covering costs of the sale, paying off other outstanding debt secured by the property that was incurred for the purpose of acquisition or property improvement, and paying any other amounts due in connection with the sale. The amount payable on the note shall be reduced by a percentage of the original principal amount of the note for each full month of ownership by the subsequent homeowner. The percentage shall be computed by determining the percentage of the term of the promissory note the homeowner has owned the property. The remainder may be retained by the subsequent homeowner selling the property.

(ii) For example, if the subsequent homeowner acquires the property from an initial homeowner at the end of year 4, there are 192 months (16 years × 12) remaining in the 20-year period. The term of the promissory note is 16 years. If the subsequent homeowner sells at the end of year 10, having owned the property for 72 months (6 years × 12), $^{72}/_{192}$ (37.5 percent) of the note would be forgiven, and 62.5 percent of the principal amount of the note would be payable from sales proceeds. The family could retain all remaining proceeds, including proceeds due to normal market value increases in the value of the property. If the subsequent homeowner retains ownership to the end of the initial 20-year period (for 16 years, in the example), the entire amount of the note would be forgiven.

(c) *Limitation on equity interest an initial homeowner may retain from sale during first six years.* (1) The HOPE program is designed to assure that an initial or subsequent homeowner does not receive any undue profit from acquiring a unit under the program and that, to the extent the sales price is sufficient, an initial homeowner recovers the equity interest in the property. With respect to any sale by an initial homeowner during the first six years after acquisition, the family may retain only the amount computed under paragraph (c) of this section. Any excess shall be distributed as provided in paragraph (d) of this section. The amount of equity an initial homeowner has in the property is determined by computing the sum of the following—

(i) The contribution to equity paid by the family (such as any down payment (in the form of cash or the value of sweat equity) and any amount paid towards principal on a mortgage loan during the period of ownership);

(ii) The value of any improvements installed at the expense of the family during the family's tensure as owner (including improvements made through sweat equity), as determined by the recipient or other entity specified in the approved application based on evidence of amounts spent on the improvements, including the cost of material and labor; and

(iii) The appreciated value, determined by applying the Consumer Price Index (Urban Consumers) against the contribution to equity under paragraphs (c)(1) (i) and (ii) of this section.

(2) The recipient (or other entity) may, at the time of initial sale, enter into an agreement with the family to set a maximum amount which this appreciation may not exceed.

(3) Amounts that count towards a family's equity may not also count towards the match.

(d) *Use of amounts a family may not retain.* Fifty percent of any portion of the net sales proceeds that may not be retained by the homeowner under paragraphs (a)(1)(ii), (b), and (c) of this section shall be paid to the entity that transferred ownership interests in units to eligible families, or another entity specified in the approved application, for use for improvements to the project, business opportunities for low-income families, supportive services related to the homeownership program, additional homeownership opportunities (including assistance for additional homeowners who are otherwise unable to cover the costs of homeownership), and other activities approved by HUD in the approved homeownership program or later. The remaining 50 percent shall be collected by the recipient and returned to HUD within 15 days of the sale for use under the HOPE 1 program, subject to any limitations contained in appropriations Acts.

Section 725. Use of proceeds from sales to eligible families.

The entity that transfers ownership interests in units to eligible families, or another entity specified in the approved application, shall use the proceeds, if any, from the initial sale for costs of the homeownership program, including operating expenses, improvements to the project, business opportunities for low-income families, supportive services related to the homeownership program, additional homeownership opportunities, and other activities approved by HUD, either as part of the approved application or later on request.

Section 730. Third party rights.

The requirements under this notice regarding housing quality standards, resale, or transfer of the ownership interest of a homeowner shall be judicially enforceable against the recipient with respect to actions involving rehabilitation, and against purchasers of eligible property under the HOPE program or their successors in interest (to the extent such requirements apply to purchasers and their successors in interest) with respect to other actions by affected low-income families, RMCs, RCs, PHAs/IHAs, and any agency, corporation, or authority of the United States government. The parties specified in the preceding sentence shall be entitled to reasonable attorney fees upon prevailing in any such judicial action.

Section 735. Displacement prohibited; protection of nonpurchasing residents.

(a) *Displacement prohibited.* No person may be displaced from his or her dwelling as a direct result of a homeownership program under this notice. This does not preclude terminations of tenancy for violation of the terms of occupancy of the unit. In addition to any applicable sanctions under the grant agreement, a violation of paragraph (a) of this section may trigger a requirement to provide relocation assistance in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and government-wide implementing regulations at 49 CFR part 24.

(b) *Temporary relocation.* The recipient shall provide each resident of an eligible property who is required to relocate temporarily to permit work to be carried out, with suitable, decent,

safe, and sanitary housing for the temporary period and shall reimburse the resident for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the costs of moving to and from the temporarily occupied housing and any increase in monthly costs of rent and utilities.

(c) *Relocation assistance for residents who elect to move.* The recipient shall provide each nonpurchasing resident who elects to move with relocation assistance in accordance with the approved homeownership program.

(1) The program shall provide, at least, the following assistance:

(i) Advisory services including timely information, counseling (including the provision of information on a resident's rights under the Fair Housing Act), and referrals to suitable, affordable, decent, safe, and sanitary alternative housing;

(ii) Payment for actual, reasonable moving expenses; and

(iii) Relocation housing assistance sufficient to permit relocation to suitable, affordable, decent, safe, and sanitary housing. This requirement is met if a family receives assistance as provided in paragraph (c)(3) of this section. For other families, this requirement is met if the cost of the housing to the family does not exceed the higher of 30 percent of adjusted family income or the amount paid by the family for the unit being vacated, and the housing is otherwise suitable and decent, safe, and sanitary.

(2) If a resident residing in an eligible property on the date HUD approved an application for an implementation grant decides not to purchase a unit, or is not qualified to do so under the terms of the approved homeownership program, the recipient shall, during the term of any operating assistance under the implementation grant, permit each otherwise qualified resident to elect to continue to reside in the project at rents that do not exceed levels determined under 24 CFR part 913 or, for Indian housing developments, part 905.

(3) If an otherwise qualified resident chooses to move (at any time during the term of the operating assistance contract), the PHA/IHA shall, if possible, offer the resident (i) a unit in another public or Indian housing development, or (ii) a section 8 certificate or voucher for use in other housing, without regard to otherwise applicable Federal or PHA/IHA preferences.

(d) *Other rights.* Tenants residing in a unit in a public or Indian housing development transferred under this notice shall have all rights provided to tenants of public or Indian housing under the 1937 Act.

(e) *Notice of relocation assistance.* As soon as feasible, each recipient shall give each resident of an eligible property a written description of the applicable provisions of this section.

VIII. Records, Reports, and Audit of Recipients

Section 801. Recordkeeping

(a) *General records.* Each recipient shall keep records that will facilitate an effective audit to determine compliance with program requirements and that fully disclose—

(1) The amount and disposition by the recipient of the planning and implementation grants received under this notice, including sufficient records that document the reasonableness and necessity of each expenditure;

(2) The amount and disposition of proceeds from financing obtained in connection with the program, sales to eligible families, and any funds recaptured upon sale by the homeowner;

(3) The total cost of the homeownership program;

(4) The amount and nature of any other assistance, including cash, property, services, or other items contributed as a condition of receiving an implementation grant;

(5) The cost or other value of all in-kind contributions towards the match required by section 410; and

(6) Any other proceeds received for, or otherwise used in connection with, the homeownership program.

(b) *Family size and income and racial, ethnic, and gender data.* The recipient shall maintain records on the family size and income, and racial, ethnic, and gender characteristics, of families who apply for homeownership and families who become homeowners.

(c) *Cooperative and condominium agreements.* The recipient shall maintain a copy of any condominium and cooperative association agreements for properties under the approved homeownership program.

(d) *Amounts available for reuse.* The recipient shall keep and make available to HUD all records necessary to calculate accurately payments due to HUD under section 720(d) and section 725.

(Approved by the Office of Management and Budget under control number 2577–0132.)

Section 805. Reports

The recipient shall submit reports required by HUD.

(Approved by the Office of Management and Budget under control number 2577–0132.)

Section 810. Access by HUD and the Comptroller General.

For the purpose of audit, examination, monitoring, and evaluation each recipient shall give HUD (including any duly authorized representatives and the Inspector General) and the Comptroller General of the United States (and any duly authorized representatives) access to any books, documents, papers, and records of the recipient that are pertinent to assistance received under this notice, including all records required to be kept by section 801.

IX. Waiver Authority

Section 901. Waiver authority.

Upon determination of good cause, the Secretary of Housing and Urban Development may waive any provision of this notice, not otherwise required by law, except provisions that establish deadlines for receipt of any modifications to applications. Each such waiver shall be in writing and shall be supported by documentation of the pertinent facts and grounds. This waiver authority may be exercised by the Secretary or the Assistant Secretary for Public and Indian Housing. Where another HUD program regulation is involved, the Secretary or the appropriate Assistant Secretary may waive the regulation. The Secretary periodically will publish notice of granted waivers in the **Federal Register** HUD may change submission deadlines established by this notice by subsequent notice published in the **Federal Register.**

Dated: December 20, 1991.

Jack Kemp,

Secretary.

[FR Doc. 92–590 Filed 1–13–92; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-92-3362; FR-3190-N-01]

Fund Availability for HOPE for Public and Indian Housing Homeownership Program

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of fund availability for FY 1992.

SUMMARY: This NOFA announces the availability of $161 million in funding for mini planning grants, full planning grants and implementation grants for the HOPE for Public and Indian Housing Homeownership Program (HOPE 1). (HOPE is an acronym for Homeownership and Opportunity for People Everywhere.) In the body of this document is information concerning eligible applicants, the funding available for mini planning grants, full planning grants, and implementation grants, the application packages, and their processing. Elsewhere in this issue of the **Federal Register** are the Notices of Fund Availability for HOPE 2, the HOPE for Homeownership of Multifamily Units Program, and HOPE 3, the Hope for Homeownership of Single Family Homes Program. Also elsewhere in this issue of the **Federal Register** is the Program Guidelines which revises the HOPE 1 Notice of Program Guidelines published in the **Federal Register** on February 4, 1991. These revised guidelines contain detailed programmatic information and the requirements governing the FY 1992 HOPE 1 Program. Similar revised Guidelines for HOPE 2 and 3 also appear in this issue. It is critical that applicants for HOPE 1 planning or implementation grants read and comply with the requirements of the revised Program Guidelines. Many of the requirements of the HOPE 1 program are not listed in this NOFA, and failure to follow the guidelines will result in applications being rejected by HUD. A copy of the program guidelines will be included in the application packages.

DATES: Applications for mini planning grants and planning grants for the HOPE 1 Program must be received in the appropriate HUD Field Office by close of business for that office on April 17 1992. Applications for implementation grants for the HOPE 1 Program must be received in the appropriate HUD Field Office by close of business for that office on May 15, 1992. Applications may also be hand delivered to the appropriate HUD Field Office by the close of business for that office on or before the deadline date Applications sent by facsimile will not be accepted. HUD will not waive these deadlines for any reason. No applications may be submitted prior to 30 calendar days before the applicable deadline. Applications submitted more than 30 calendar days before the deadline will be returned to applicants.

ADDRESSES: An original and one copy of the completed application must be submitted to the HUD Field Office having jurisdiction over the locality in which the proposed project is located. The applications should be addressed to the Attention of: Public Housing Division Director or Office of Indian Programs Director A list of HUD's Field Offices appears at the end of this NOFA. In States with more than one Field Office, applicants must submit their applications to the correct Field Office. Applicants are advised to contact their local office to confirm the appropriate place and time of close of business for submission. Failure to submit an application to the correct Field Office by the due date will result in disqualification of the application. In addition, one copy of the application should be submitted to the following address: Department of Housing and Urban Development, Office of Public and Indian Housing, Office of Resident Initiatives, room 4112, 451 Seventh Street, SW., Washington, DC 20410, Attention: Gary Van Buskirk. While copies must be submitted both to the HUD Field and Central Offices, the date and time of receipt in the Field Office will be used to determine whether the application has been submitted on time.

FOR FURTHER INFORMATION CONTACT: Gary Van Buskirk, Office of Resident Initiatives, Department of Housing and Urban Development, room 4112, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708-4233. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1-800-877-TDDY, 1-800-877-8339, or 202-708-9300. (Telephone numbers, other than "800" TDD numbers, are not toll-free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been approved under the Paperwork Reduction Act of 1980 by the Office of Management and Budget (OMB), and have been assigned on OMB control number 2577—0132.

I. Purpose and Substantive Description

A. Authority

The funding made available under this NOFA is authorized by title III of the U.S. Housing Act of 1937, which was added by section 411 of the National Affordable Housing Act (Pub. L. 101-625 November 28, 1990), which created the HOPE 1 Program.

B. Allocation Amounts

The purpose of this NOFA is to announce the availability of a total of $161 million in funds, appropriated by the Department's appropriations Act for fiscal year 1992 (Pub. L. 102-139. October 28, 1991), for grants as follows:

- $6 million for mini planning grants
- $18 million for full planning grants
- $137 million for implementation grants

C. Mini Planning Grant Cap

The amount of a mini planning grant may not exceed $100,000, except that HUD may, for good cause, approve a grant for a higher amount, based on justification submitted by the applicant demonstrating that the costs are reasonable. Applications for more than $100,000 for projects of more than 250 units do not need to demonstrate good cause if the additional amount requested is not more than $400 for each unit over 250.

D. Planning Grant Cap

The amount of a planning grant may not exceed $200,000, except that HUD may, for good cause, approve a grant in a higher amount, based on justification submitted by the applicant demonstrating that the costs are reasonable. Applications for more than $200,000 for projects of more than 250 units do not need to demonstrate good cause if the additional amount requested is not more than $800 for each unit over 250.

E. Implementation Grant Cap

The overall amount of an implementation grant is not capped. There are specific cost caps on eligible activities that are contained in the Program Guidelines and application package.

F. Matching Requirements

Implementation grants require a local match from non-Federal sources. Planning grants do not require a match.

G. Eligible Applicants

For mini planning grants, full planning grants, and implementation grants, an eligible applicant is one of the following

entities that represents the residents of the eligible property: An RMC (resident management corporation; an RC (resident council); a cooperative association; a public or private nonprofit organization; a public body, including an agency or instrumentality thereof; a PHA (public housing agency); or an IHA (Indian housing authority). An applicant may not submit an application for a planning grant and an implementation grant for the same property in response to any one NOFA.

H. Certification of Consistency with the Comprehensive Housing Affordability Strategy

Applications for HOPE grants must be accompanied by a certification of consistency with an approved Comprehensive Housing Affordability Strategy (CHAS) or abbreviated housing strategy from the public official responsible for submitting the CHAS, or his or her authorized representative. State and local government applicants must have submitted a full CHAS or an abbreviated strategy, and must provide a certification of consistency at the time of application. All other applicants (including private nonprofit organizations and public housing agencies) must obtain the certification from the lowest level of government having either a full CHAS or an abbreviated strategy covering the jurisdiction in which the program (project) is to be located. Where the program will be carried out in more than one unit of general local government with a CHAS, a certification for each shall be included. Indian Tribes and Indian Housing Authorities are not subject to the requirements for preparation of a CHAS or submission of a certification of consistency with the CHAS.

For an application for a HOPE grant to be consistent with a CHAS: (1) Homeownership for low-income families must be identified as a priority in the narrative and (for local jurisdictions only) Table 3 (Priorities for Assistance) of Section II (Strategy) of the CHAS; (2) the HOPE program for which funding is sought should be mentioned (whether by name or by program type) in the narrative of section III (Annual Plan) of the CHAS as among the Federal resources to be used in FY 1992; and (3) a specific dollar amount for the HOPE program applied for must be entered in Column A of Table 4/5A (Anticipated Resources and Plan for Investment) of Section III.

Note: Since Table 4/5A for States does not include information on applications by entities other than the State itself, a State may certify consistency for a HOPE application from a private nonprofit or a PHA even if there is no dollar amount entered in Column A of the State's Table 4/5A.

If a jurisdiction's strategy identifies low-income homeownership as a priority in the section II narrative, but does not mention the HOPE program in the section III narrative or include a specific dollar amount for the program in Column A of table 4/5A, the jurisdiction may amend its strategy by correcting its section III narrative and table 4/5A to be consistent with its strategy without doing a substantial amendment, which requires citizen participation. However, if there is no dollar amount entered in Column A of table 4/5A and there is also no priority for low-income homeownership identified in the section II narrative, a substantial amendment, requiring citizens participation, would be needed to modify the CHAS to allow the jurisdiction to provide a certification of consistency.

All CHASs or abbreviated strategies, revised tables and narratives for nonsubstantial amendments, or substantial amendments, as well as the required certifications of consistency, must be submitted to HUD no later than at the time the application for HOPE funding is submitted.

To assist applicants in meeting the certification requirement where a CHAS, abbreviated strategy, or amendment has not yet been approved, HUD will accept applications that are accompanied by a certification that the application is consistent with the housing strategy submitted with, or as amended by a submission with, the application, and that the applicant will follow the strategy so submitted or amended when it is approved by HUD.

I. Use of Set-Asides to Fund Other Grants

Any amounts set-aside to fund applications for mini planning grants that are not needed because there are insufficient approvable applications shall be used to fund the highest ranked, unfunded applications for full planning grants. Any amounts set aside to fund applications for full planning grants that are not needed because there are insufficient approvable applications shall be used to fund the highest ranked, unfunded applications for mini planning grants. Any amounts available to fund planning grants that are not needed because there are insufficient approvable applications shall be used to fund the highest ranked, unfunded implementation grant applications. Any amounts available to fund implementation grants that are not needed because there are insufficient approvable applications shall be used to fund the highest ranked, unfunded planning grant applications.

II. Mini Planning Grant and Planning Grant Applications

A. Application Process

Application packages for mini planning grants and full planning grants, including instructions for preparing applications, are available from the appropriate HUD Field Office or Office of Indian Programs (see the list of HUD Offices at the end of this NOFA) or by calling HUD's Resident Initiatives Clearinghouse, telephone 1–800–955–2232. Additional information regarding the submission of applications is included in the package.

Only timely applications submitted to the correct Field Office will be considered for funding. Applications (original and one copy) must be physically received by the deadline at the appropriate HUD Field Office or in the case of IHAs, in the appropriate HUD Office of Indian Programs, with jurisdiction over the applicant, Attention: Public Housing Division Director or Office of Indian Programs Director. In addition, one copy of the application must be submitted to Headquarters, as described in the paragraph above entitled "ADDRESSES." It is not sufficient for an application to bear a postmark date within the deadline. Applications submitted by facsimile will not be accepted.

B. Application Submission Requirements

Complete application submission requirements are contained in the application package. Applicants are advised that they must consult the amended Notice of Program Guidelines published elsewhere in today's **Federal Register** in order to prepare an application. Many of the requirements of the HOPE 1 program are not repeated in this NOFA, such as certifications, eligible activities, and cost limitations. Failure to follow the guidelines will result in applications being rejected by HUD. All potential applicants are urged to contact their HUD Field Office for information and guidance about program requirements and preparation of an application and for the time and place of any workshops and/or training sessions to be held within the Field Office's jurisdiction.

C. Selection Process

The selection process for mini planning grants and full planning grants under the HOPE 1 Program consists of a

screening and then, for those applications meeting all screening requirements, rating and ranking under five substantive selection criteria. Field Offices and Regional offices will review and rate the applications. HUD Headquarters will rank and select applications.

D Screening Process/Corrections to Deficient Applications

1 HUD shall screen each application submitted on or before the deadline to determine if it is complete, is internally consistent, and contains correct computations. Where HUD determines an application is deficient in one or more of these areas, it shall notify the applicant in writing and give it an opportunity to correct the deficiencies in its application. However, the applicant may not substantially revise the application, such as by substituting another eligible property or applicant or changing other fundamental features of the program, because that would not be fair to other applicants.

2. The notification shall require an applicant to submit additional or corrected material so that it is received in the appropriate HUD Field Office no later than close-of business on the 14th calendar day after the date of the written notification to the applicant to modify its application. HUD may not extend this deadline for actual receipt of the material for any reason. HUD shall not consider further any applications that are not complete, are internally inconsistent, or do not contain correct computations, after the opportunity, if any, to submit additional or corrected material, or that fail to comply with other program requirements.

E. Selection Criteria

Rating and ranking will be done using the following five substantive selection criteria:

1. Capability of the applicant—up to 40 points.
2. Resident and homebuyer interest and marketability—up to 15 points.
3. Suitability of the property—up to 15 points.
4. Local support—up to 15 points.
5. Efficiency—up to 15 points.

A complete description of the procedure for rating applications and of the factors considered under each selection criterion may be found in section 315 of the amended Notice of Program Guidelines.

F Ranking and Selection

A complete description of the procedures for selection may be found in section 315 of the amended Notice of Program Guidelines.

III. Implementation Grant Applications

A. Application Process

Application packages for implementation grants, including instructions for preparing applications, are available from the appropriate HUD Field Office or the Office of Indian Programs (see the list of HUD Offices at the end of this NOFA) or by calling HUD's Resident Initiatives Clearinghouse, telephone 1–800–955–2232. Additional information regarding the submission of applications is included in the package.

Only timely applications received in the appropriate Field Office will be considered for funding. Applications (original and one copy) must be physically received by the deadline at the appropriate HUD Field Office or, in the case of IHAs, in the appropriate HUD Office of Indian Programs, with jurisdiction over the applicant, Attention: Public Housing Division Director. In addition, one copy of the application must be submitted to Headquarters, as described in the paragraph above entitled "ADDRESSES." It is not sufficient for an application to bear a postmark date within the deadline. Applications submitted by facsimile will not be accepted.

B. Application Submission Requirements

Complete application submission requirements are contained in the application package. Applicants are advised that they must consult the amended Notice of Program Guidelines in order to prepare an application. Many of the requirements of the HOPE 1 program are not repeated in this NOFA, such as certifications, eligible activities, and cost limitations. Failure to follow the guidelines will result in applications being rejected by HUD. All potential applicants are urged to contact their HUD Field Office for information and guidance about program requirements and preparation of an application and for the time and place of any workshops and/or training sessions to be held within the Field Office s jurisdiction.

C. Selection Process

The selection process for implementation grants under the HOPE 1 Program consists of a screening, a threshold review, and then, for those applications meeting all threshold requirements, rating and ranking under nine substantive selection criteria. HUD Headquarters, with assistance from Field Office and Regional Office staff, will rate and rank the applications and make the selections.

D. Screening Process/Corrections to Deficient Applications

1. HUD shall screen each application submitted on or before the deadline to determine if it is complete, is internally consistent, and contains correct computations. Where HUD determines an application is deficient in one or more of these areas, it shall notify the applicant in writing and give it an opportunity to correct the deficiencies in its application. However the applicant may not substantially revise the application, such as by substituting another eligible property or applicant or changing other fundamental features of the program, because that would not be fair to other applicants.

2. The notification shall require an applicant to submit additional or corrected material so that it is received in the appropriate HUD Field Office no later than close-of-business on the 14th calendar day after the date of the written notification to the applicant to modify its application. HUD may not extend this deadline for actual receipt of the material for any reason. HUD shall not consider further any applications that are not complete, are internally inconsistent, or do not contain correct computations, after the opportunity, if any, to submit additional or corrected material, or that fail to comply with other program requirements.

E. Threshold Review

HUD shall review each application that qualifies for additional consideration because it passed the screening process to determine if it meets certain threshold criteria. These threshold criteria are contained in section 420 of the amended Notice of Program Guidelines.

F Selection Criteria

All applications which pass the threshold review will be rated and ranked, using the following nine substantive selection criteria:

1. Capability of the applicant—up to 30 points.
2. Local support—up to 5 points.
3. Resident and homebuyer interest and marketability—up to 10 points.
4. Quality and feasibility of the program—up to 25 points.
5. Relationship to the Comprehensive Housing Affordability Strategy—up to 5 points.
6. Efficient use of the grant—up to 10 points.
7 Suitability of the property—up to 10 points.
8. Minority Business Enterprise/ Women-owned business enterprise—up to 5 points.

9. Appreciable reduction of public or Indian housing in the locality—deduction of up to 15 points.

A complete description of the rating of applications and of the factors considered under each selection criterion may be found in section 425 of the amended Notice of Program Guidelines.

G. Ranking and Selection

After assigning points under the selection criteria, HUD shall rank the implementation grant applications. HUD shall examine the ranking and, where it determines that applications falling below a certain point total are not suitable or not feasible for homeownership, it may establish a minimum number of points for applications to qualify to be selected for funding. A complete description of the procedure for selection is contained in section 425 of the amended Notice of Program Guidelines.

IV. Other Matters

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

B. Federalism Executive Order

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that the provisions in this NOFA are closely based on statutory requirements and impose no significant additional burdens on States or other public bodies. This NOFA does not affect the relationship between the Federal Government and the States and other public bodies or the distribution of power and responsibilities among various levels of government. Therefore, the policy is not subject to review under Executive Order 12612.

C. Family Executive Order

The General Counsel, as the designated official under Executive Order 12606, The Family, has also determined that some of the policies in this NOFA will have a potential significant impact on the formation, maintenance, and general well-being of the family. Achievement of homeownership by low-income families in the program can be expected to support family values, by helping families achieve security and independence; by enabling them to live in decent, safe and sanitary housing; and by giving them the skills and means to live independently in mainstream American society. Since the impact on the family is beneficial, no further review is necessary.

D. Section 102 of the HUD Reform Act

On March 14, 1991, the Department published in the **Federal Register** a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (24 CFR part 12, 56 FR 11032). Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by the Department.

Since HUD makes assistance under this program available on a competitive basis, 24 CFR part 12 requires HUD to:

—Ensure that documentation and other information regarding each application submitted to the Department are sufficient to indicate the basis upon which assistance was provided or denied. HUD must make this material available for public inspection for a five-year period. (§ 12.14 (b)) HUD will provide further guidance on how this material may be accessed in a later notice published in the **Federal Register**.

—Publish a notice in the **Federal Register** at least quarterly indicating the recipients of the assistance. (§ 12.16(a))

Subpart C of 24 CFR part 12 requires that applicants seeking assistance from HUD for a specific project or activity make the disclosures required under § 12.32. An implementing notice for part 12, subpart C, is being published in the **Federal Register**. Applicants shall use the form and guidance contained in that notice to make the required disclosures.

E. Section 103 of the HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) was published May 13, 1991 (56 FR 22088) and became effective June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. the requirements of the rule continue to apply until the announcement of selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by 24 CFR part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815; TDD: (202) 708–1112. (These are not toll-free numbers.)

F. Section 112 of the HUD Reform Act

Section 112 of the HUD Reform Act amended the Department of Housing and Development Act by adding section 13, which contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second prohibits the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of the assistance.

Section 13 was implemented by final rule (24 CFR part 86) published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in appendix A of 24 CFR part 86.

Any questions concerning the rule should be directed to Arnold J. Haiman, Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 24410. Telephone: (202) 708–3815; TDD: (202) 708–1112. (These are not toll-free numbers.) Forms necessary for application for compliance with the rule may be obtained from the local HUD office.

G. Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (The "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients

of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

HUD Field Offices

Alabama

Birmingham Office, Beacon Ridge Tower, 600 Beacon Pkwy. West, suite 300, Birmingham, Al 35209; (205) 731–1617, (TDD) (205) 731–1617.

Alaska

Anchorage Office, Federal Bldg., 222 W. 8th Ave., No. 64, Anchorage, AK 99513; (907) 271–4170.

Arizona

Phoenix Office, 400 N. 5th St., suite 1600, 2 Arizona Center, Phoenix, AZ 85004; (602) 379–4434, (TDD) (602) 379–4461.

Arkansas

Little Rock Office, Lafayette Bldg., suite 200, 523 Louisiana, Little Rock, AR 72201; (501) 324–5931, (TDD) (501) 324–5405.

California

Los Angeles Office, 1615 W. Olympic Blvd., Los Angeles, CA 90015; (213) 251–7122, (TDD) (213) 251–7038.

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Sacramento Office, 777 12th St., Suite 200, Sacramento, CA 95814; (916) 551–1351, (TDD) (916) 551–5971.

Colorado

Denver Regional Office, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202; (303) 844–4513.

Connecticut

Hartford Office, 330 Main Street, First Floor, Hartford, CT 06106; (203) 240–4523, (TDD) (203) 240–4522.

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Florida

Jacksonville Office, 325 W. Adams St., Jacksonville, FL 32202; (904) 791–2626, (TDD) (904) 791–1241.

Georgia

Atlanta Regional Office, Richard B. Russell Fed. Bldg., 75 Spring St., SW., Atlanta, GA 30303; (404) 331–5136, (TDD) (404) 730–2654.

Hawaii

Honolulu Office, 7 Waterfront Plaza, suite 500, 500 Ala Moana Blvd., Honolulu, HI 96813–4918; (808) 541–1327, (TDD) (808) 551–1356.

Idaho

Portland Office, 520 SW. 6th Ave., Portland, OR 97204 (503) 326–2561.

Illinois

Chicago Regional Office, 77 W. Jackson Blvd., 26th floor, Chicago, IL 60604–3507; (312) 353–5680.

Indiana

Indianapolis Office, 151 N. Delaware St., Indianapolis, IN 46204; (317) 226–6303.

Iowa

Des Moines Office, Fed. Bldg., 210 Walnut St., room 239, Des Moines, IA 50309; (515) 284–4512, (TDD) (515) 284–4706.

Kansas

Kansas City Regional Office, Gateway Towers 2, 400 State Ave., Kansas City, KS 66101; (913) 236–2162, (TDD) (913) 236–3972.

Kentucky

Louisville Office, P.O. Box 1044, 601 W. Broadway, Louisville, KY 40201; (502) 582–5251, (TDD) (502) 582–5139.

Louisiana

New Orleans Office, Fisk Fed. Bldg., 1661 Canal St., New Orleans, LA 70112; (504) 589–7200.

Maine

Manchester Office, Norris Cotton Fed. Bldg., 275 Chestnut St., Manchester, NH 03101; (603) 666–7681, (TDD) (603) 666–7518.

Maryland

Baltimore Office, Equitable Bldg., 3rd Floor, 10 N. Calvert St., Baltimore, MD 21202; (301) 962–3047, (TDD) (301) 962–0106.

Massachusetts

Boston Regional Office, Thomas P. O'Neill, Jr., Fed. Bldg., 10 Causeway St., room 375, Boston, MA 02222; (617) 565–5234, (TDD) (617) 565–5453.

Michigan

Detroit Office, Patrick V. McNamara Fed. Bldg., 477 Michigan Ave., Detroit, MI 48226; (313) 226–7900.

Grand Rapids Office, 2922 Fuller Ave., NE, Grand Rapids, MI 49505; (616) 456–2100.

Minnesota

Minneapolis-St. Paul Office, 220 2nd St., South, Minneapolis, MN 55401; (612) 370–3000.

Mississippi

Jackson Office, Dr. A. H. McCoy Fed. Bldg., 100 W. Capitol St., room 910, Jackson, MS 39269; (601) 965–4702, (TDD) (601) 965–4171.

Missouri (Eastern)

St. Louis Office, 1222 Spruce St., St. Louis, MO 63103; (314) 539–6560, (TDD) (314) 539–6331.

(Western)

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Nevada

(Las Vegas, Clark Cnty.) Phoenix Office, 400 N. 5th St., suite 1600, 2 Arizona Center, Phoenix, AZ 85004; (602) 379–4434, (TDD) (602) 379–4461.

(Remainder of state)

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New Jersey

Newark Office, Military Park Bldg., 60 Park Pl., Newark, NJ 07102; (201) 877–1662, (TDD) (201) 877–6649.

New Mexico

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New York (Upstate)

Buffalo Office, Lafayette Ct., 465 Main St., Buffalo, NY 14203; (716) 846–5755, (TDD) (716) 846–5787.

(Downstate)

New York Regional Office, 26 Federal Plaza, New York, NY 10278; (212) 264–6500, (TDD) (212) 264–0927.

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North Dakota

Denver Regional Office, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202; (303) 844–4513.

Ohio

Cincinnati Office, Fed. Office Bldg., room 9002, 550 Main Street, Cincinnati, OH 45202; (513) 684–2884.

Cleveland Office, One Playhouse Sq., 1375 Euclid Ave., room 420, Cleveland, OH 44114; (216) 522–4058.

Columbus Office, 200 N. High St., Columbus, OH 43215; (614) 469–5737.

Oklahoma

Oklahoma City Office, Murrah Fed. Bldg., 200 NW. 5th St., Oklahoma City, OK 73102; (405) 231–4181, (TDD) (405) 231–4181.

Oregon

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(Eastern)

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Puerto Rico

Caribbean Office, 159 Carlos Chardon Ave., San Juan, PR 00918; (809) 766–6121.

Rhode Island

Providence Office, 330 John O. Pastore Fed. Bldg., & U.S. Post Office—Kennedy Plaza, Providence, RI 02903; (401) 528–5351, (TDD) (401) 528–5364.

South Carolina

Columbia Office, Strom Thurmond Fed. Bldg., 1835 Assembly St., Columbia, SC 29201; (803) 765–5592.

South Dakota

Denver Regional Office, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202; (303) 844–4513.

Tennessee

Knoxville Office, 710 Locust St., Third Floor, Knoxville, TN 37902; (615) 549–9384, (TDD) (615) 549–9372.

Nashville Office, 251 Cumberland Bend Dr., suite 200, Nashville, TN 37228; (615) 763–5213.

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Manchester Office, Norris Cotton Fed. Bldg., 275 Chestnut St., Manchester, NH 03101; (603) 666–7681, (TDD) (603) 666–7518.

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Seattle Regional Office, Arcade Plaza Bldg., 1321 2nd Ave., Seattle, WA 98101; (206) 553–5414.

West Virginia

Charleston Office, 405 Capitol St., Suite 708, Charleston, WV 25301; (304) 347–7000, (TDD) (304) 347–7044.

Wisconsin

Milwaukee Office, Henry Reuss Fed. Plaza, 310 W. Wisconsin Ave., Milwaukee, WI 53203; (414) 297–3214.

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Denver Regional Office, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202; (303) 844–4513.

Indian Housing Offices

Alaska

Indian Housing Division, Anchorage Office, 222 W. 8th Ave., No. 64, Anchorage, AK 99513; (907) 271–4633.

Arizona

Office of Indian Programs, Phoenix Office, 400 N. 5th St., suite 1650, 2 Arizona Center, Phoenix, AZ 85004; (602) 261–4156.

Colorado

Office of Indian Programs, Denver Regional Office, Exec. Tower Bldg., 1405 Curtis St., Denver CO 80202; (303) 844–2963.

Illinois

Office of Indian Programs, Chicago Regional Office, 77 W. Jackson Blvd., Chicago, IL 60604–3507; (312) 886–4532, or (800) 735–3239.

Oklahoma

Indian Programs Division, Oklahoma City Office, Murrah Fed. Bldg., 200 NW. 5th St., Oklahoma City, OK 73102; (405) 736–4101.

Washington

Office of Indian Programs, Seattle Regional Office, Arcade Plaza Bldg., 1321 2nd Ave., Seattle, WA 98101; (206) 553–4633.

Dated: December 20, 1991.

Jack Kemp,

Secretary.

[FR Doc. 92–591 Filed 1–13–92; 8:45 am]

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Tuesday
January 14, 1992

Part III

Department of Housing and Urban Development

Office of the Secretary

24 CFR Subtitle A

HOPE for Homeownership of Multifamily Units Program; Program Guidelines and Notice of Fund Availability

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Subtitle A

[Docket No. N-92-3198; FR-2967-N-03]

HOPE for Homeownership of Multifamily Units Program; Program Guidelines

AGENCY: Office of the Secretary, HUD.

ACTION: Program guidelines.

SUMMARY: This document revises HUD's guidelines published on February 4, 1991 (56 FR 4436), that govern the operation of the HOPE for Homeownership of Multifamily Units program (HOPE 2) that provide for homeownership by low-income families. The amendments take effect immediately. Elsewhere in today's issue of the **Federal Register**, HUD is publishing A Notice of Fund Availability for the HOPE 2 program and NOFAs for, and notices amending, the other two HOPE Grant programs:

HOPE for Public and Indian Housing Homeownership (HOPE 1); and

HOPE for Homeownership of Single Family Homes (HOPE 3).

The HOPE Grant programs are authorized by title IV of the Cranston-Gonzalez National Affordable Housing Act (NAHA) (Pub. L. 101-625, enacted November 28, 1990). HOPE is an acronym for Homeownership and Opportunity for People Everywhere.

The purpose of the HOPE Grant programs is to provide homeownership opportunities for low-income families and individuals. Important to the success of the HOPE 2 program will be the development of resident-based organizations that will have central responsibilities for the programs.

The authorizing legislation provides for implementation by publication of a notice for immediate effect. Comments on the notice published on February 4, 1991 were due September 30. HUD invites further public comment on this notice of program guidelines, including the amendments, and will consider the comments, together with the comments received by September 30, in developing the final rule for the program. As required by the statute, HUD will publish the final rule within eight months from today.

DATES: Effective date: January 14, 1992.

Comment due date: April 15, 1992.

The amendments to these Guidelines contain no additional information collection requirements.

ADDRESSES: Interested persons are invited to submit comments regarding these guidelines to the Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.-5:30 p.m. Eastern Time) at the above address.

FOR FURTHER INFORMATION CONTACT: Margaret Milner, Office of Housing, 202-708-4542. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1-800-877-TDDY, 1-800-877-8339, or 202-708-9300. Department of Housing and Urban Development, room 6130, 451 Seventh Street SW., Washington, DC 20410. (Telephone numbers, other than "800" TDD numbers, are not toll-free.)

SUPPLEMENTARY INFORMATION: The information collection requirements contained in these amended guidelines have been approved through April 30, 1992, by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), and assigned OMB control number 2502-0451. Information on the estimated public reporting burden is provided in this document under the heading "Other Matters." Comments regarding burden estimates or any other aspects of the collection requirements should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3001, Washington, DC 20503, Attention: Jenny Main, Desk Officer for HUD.

Summary of Amendments to HOPE 2 Guidelines

In addition to various clarifications, technical corrections, and a few reorganizations, HUD has made the following significant changes to the guidelines published on February 4, 1991. Potential applicants should read the entire document thoroughly.

Part I. Purpose; Summary; and Relationship to Other Programs

In section 110(a), Waiver of Section 8 Regulations, the paragraph describing anticipated amendments to 24 CFR part 791 has been deleted, since the amendments to part 791 were published at 56 FR 9828 on March 7, 1991. Part 791 governs the allocation of housing assistance and, as amended, permits HUD to set aside section 8 authority for use in connection with the HOPE programs.

Part II. Definitions

The definition of Applicant has been amended to add mutual housing associations as eligible applicants. Congress added this category of applicants for HOPE 2 in the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992 (Pub. L. 102-139, October 28, 1991). The definition of applicant has also been clarified by noting that a cooperative association may be an eligible applicant only for property it proposes to acquire and transfer to eligible families.

The definition of Census Region has been deleted since the term is no longer used. HUD has decided to assure compliance with the requirement for geographic diversity by assuring a certain level of funding in each of the 10 HUD Regions, rather than in each of the four Census Regions.

The definition of Homeownership Program has been amended to require that at least 80 percent of the units being purchased be purchased by low-income families and that no purchasing family have an income above 95 percent of the area median. This change will avoid the possibility that a property predominantly occupied by non-low-income families will be selected under the program. The practical effect of this revision is that developments that have families above 95 percent of the area median income would not be eligible under the program unless these families were willing to move or remain in the development as renters.

A definition of Mutual Housing Association has been added, in light of the addition of these associations as eligible applicants.

The definition of Ownership Interest has been amended by noting that mutual housing is eligible only to the extent it provides for the transfer of ownership interests to eligible families. Some forms of mutual housing do not give occupants ownerships rights, such as an equity stake in the property or the right to sell the property (or shares representing the property, as in cooperatives).

The definition of Private Nonprofit Organization has been amended to require that it be a tax exempt entity under section 501(c) of the Internal Revenue Code of 1986. RMCs and RCs must be nonprofit organizations, but need not meet the definition of private nonprofit organizations, and, therefore, need not be tax exempt under section 501(c). This will avoid imposing an undue administrative burden on resident entities.

Part III. Planning Grants

Under Section 301(a), Planning Grants, HUD will comply with the requirement for national geographic diversity by selecting at least three planning grants for each of the 10 HUD Regions (assuming sufficient approvable applications), rather than the four Census regions. HUD has determined that sufficient funding has been appropriated to permit wider geographic diversity than provided in the earlier notice.

Under Section 301(c), Grants Cap, HUD is providing a "safe harbor" where an applicant requests a planning grant of more than $200,000 ($100,000 for a mini planning grant). No additional demonstration of good cause is required for applications representing more than 250 units which request more than the dollar cap, if the additional amount requested is not more than $800 for each unit over 250 for a planning grant or not more than $400 for each unit over 250 for a mini planning grant. If the applicant submits an application exceeding these unit caps, the application must contain a justification demonstrating that the costs are reasonable.

Section 305, Eligible Planning Grant Activities, has been clarified to provide that only costs incurred on or after the effective date of the grant agreement for the planning grant qualify for funding under the program.

Section 305(g), Security Plans, has been amended to give examples of activities that are eligible under the heading "Security Plans." This activity may cover assessing the need for the hiring of security personnel and creating tenant patrols, for negotiating agreements with local law enforcement agencies, and for providing security systems.

Section 310(a), NOFA, has been amended to provide that an applicant may submit an application for either a planning grant or an implementation grant, but not both, for any one eligible property. Applicants are in the best position to elect which type of grant is appropriate for it and in the best interests of the residents of the property. It has also been amended by moving the provision that states that applicants may request information and guidance from HUD about program requirements and preparation of the application to the appropriate place in the guidelines. This sentence was mistakenly placed under "Screening" in the February 4 guidelines. The same correction has also been made to Section 415(a).

Under a new Section 310(b)(1)(iii), applicants are required to propose establishment of a resident entity promptly after the effective date of the grant agreement, if no such entity already exists. Resident involvement is critical to the success of a HOPE homeownership program. This important improvement will assure that applicants will actively enlist participation by the residents in the development and execution of homeownership programs under the HOPE program.

Section 310(b)(2)(i) has been amended in several ways. The guidelines now encourage unincorporated resident organizations to work with an eligible applicant to develop a planning grant application under which the resident organization could work toward applicant status for an implementation grant request. HUD believes that resident organizations should take the lead in carrying out the program wherever possible. In addition, the guidelines permit an application from a private nonprofit organization that has applied for tax exempt status under section 501(c) of the Internal Revenue Code of 1986 on or before the date of application to be considered, so long as it receives approval before the effective date of the grant agreement. This will give applicants additional time to meet the new requirement for tax exempt status (see the revision to the definition of private nonprofit organization).

Section 310(b)(4)(i) has been clarified to state that an authorized representative of the public official who submits the CHAS may make the certification that an application is consistent with the CHAS.

Section 310(b)(4)(ii) has been amended to delete the requirement that an IHA demonstrate in its application that its proposed homeownership program is consistent with the tribal plan. (Indian tribes and IHAs are not subject to the requirement that the application contains a certification of consistency with the CHAS.) This amendment will simplify the program for entities that lack the administrative resources to carry out detailed planning.

Section 310(b)(7), Resident Interest, has been amended to provide that where there is more than one resident organization, the application must so indicate and state the result of a resident election, conducted by a disinterested third party, designating one resident organization to submit a board resolution supporting the application.

A new section 310(b)(8), Nonduplication of Funding, has been added to require the application to contain a certification that the applicant has not and will not receive assistance from the Federal government, a State, or a unit of general local government, or any agency or instrumentality thereof, for activities for which funding is requested in the application.

Section 310(c), Screening, has been clarified. See, also, Section 415(c), for conforming changes for implementation grants.

Section 315(a)(1), the rating factor entitled Capability, has been amended to permit HUD to assign points based on an explanation of how applicant capability for developing a successful and affordable homeownership program will be obtained.

Section 315(b), Ranking and Selection to Assure National Geographic Diversity, formerly cross referenced to the ranking and selection procedures under the implementation grant provisions of the guidelines. The February 4 guidelines provided for ranking of planning grant and implementation grant applications together. HUD now believes this approach was ill-considered, and the revised guidelines provide for separate ranking. The distinctive nature of the two types of grants makes it more appropriate that they compete separately. Section 315(b) sets forth separate procedures for ranking and selecting planning grant applications.

Section 315(c), Reduction in Requested Grant Amounts, has been amended to clarify that HUD may not only approve an application for an amount lower than requested but may also adjust line items in the proposed budget within the amount requested.

Part IV. Implementation Grants

Section 401(b), National Competition, has been amended to require that HUD select at least one application from each of the 10 HUD Regions, instead of from each of the four Census regions. HUD has determined that sufficient funds were appropriated to fund at least one application in each HUD Region to achieve national geographic diversity and still permit selection based on a national competition for the remaining funds. See, also, a related conforming change to Section 425(c).

Section 401(c), Overall Limitation on Grant Amount, has been amended. The February 4 guidelines limited the amount of an implementation grant for each unit to the present value of 10 years' worth of section 8 existing housing fair market rents (FMRs), projected for a 10-year period. This would require a relatively complicated procedure of estimating amended FMR over the next 10 years and then discounting those amounts to present value. As revised, the cap is simply 10

years' worth of the present published FMR.

Consistent with the planning grant amendment, Section 405(a), Limitations, has been amended to provide that only costs incurred on or after the effective date of the grant amendment qualify for funding under the program.

Section 410(b)(1)(i) has been clarified to provide that cash contributions must be contributed permanently for uses under the program to count towards the match.

Section 410(b)(1) (iv) and (v) have been added to clarify computation of the match. Clause (iv) provides that cash contributions may be made by the applicant, non-Federal public entities, private entities, and individuals, including program income from a Federal grant earned after the end of the award period if no Federal requirements govern their disposition (including UDAG and HoDAG repayments). Clause (v) provides that the grant equivalent of a below-market interest rate loan to the homebuyer, where all repayments, interest, and other return will not be permanently contributed to the HOPE program, may be counted as a cash contribution, in accordance with specified standards. These provisions were taken from the HOME rule governing match requirements for that program.

Section 410(b)(1)(vi) clarifies that a down payment by an eligible family may not count towards the match (since it is counted towards a family's equity and, therefore, cannot be considered a permanent contribution to the program). Finally, Section 410(b)(1)(vii) permits amounts that an applicant has requested in an application submitted to the Federal Housing Finance Board for assistance under its Affordable Housing Program to count towards the match, so long as FHFB approves the application before the date HUD approves the HOPE application.

Section 410(b)(5), Infrastructure, has been amended to provide that an infrastructure investment may be counted towards the match only if it was completed after the date that is 12 months before the date of the HUD notification to the applicant of implementation grant approval and no later than five years from the effective date of the grant agreement. This makes the HOPE program substantially consistent with the HOME program. The February 4 guidelines permitted counting infrastructure expenditures only if they were made after the date of HUD approval of the application and set no deadline for completion.

Section 410(b)(7)(ii), under Other In-Kind Contributions, has been amended to increase the valuation of donated labor, including sweat equity, from $5 an hour to $10 an hour, consistent with recent changes to HUD's Shelter Plus Care program. It has also been clarified to provide that sweat equity may be counted towards the match only if it is not also counted towards a family's equity.

Section 410(b)(7)(iii) has been added to provide guidance in the case of donated materials and supplies.

Section 415(a), NOFA, has been amended to provide that an applicant may submit an application for a planning grant or an implementation grant for any one eligible property, but not both, consistent with the amendment to the planning grant portion of the guidelines.

Section 415(b)(3)(iii) is new. It permits an application from a private nonprofit organization that has applied for tax exempt status under section 501(c) of the Internal Revenue Code of 1986 on or before the date of application to be considered, so long as it receives approval before the effective date of the grant agreement.

Under Section 415(b)(4), Description of Proposed Homeownership Program, applicants are required to propose establishment of a resident entity promptly after the effective date of the grant agreement, if no such entity already exists. Resident involvement is crucial to the success of a HOPE homeownership program. This important improvement will assure that applicants will actively enlist participation by the residents in the development and execution of homeownership programs under the HOPE program.

Section 415(b)(8), Economic Development, has been amended to require an application to contain a plan for economic development activities if the applicant also requests assistance for operating expenses. Where post-sale operating assistance is needed, HUD has determined that economic development activities should always be required to assure successful phasing out of operating assistance.

Section 415(b)(9)(ii) has been added to provide that, where the match does not apply to an IHA in accordance with Section 410(d), the application shall contain a certification that the IHA has not received, and will not receive, amounts under title I of the Housing and Community Development Act of 1974 for the fiscal year in which HUD obligates the HOPE grant funds.

Section 415(b)(12)(i)(B) has been amended to require the application to demonstrate that the monthly expenditure for principal, interest, taxes, insurance, estimated utilities, and other housing costs by an eligible family, that is necessary to complete the sale for the initial acquisition of a unit be no less than 25 percent of adjusted family income. The initial guidelines only included the 35 percent ceiling, and HUD has determined that families should be required to pay a certain minimum amount to avoid possible abuse.

Section 415(b)(17)(i) has been clarified to state that an authorized representative of the public official who submits the CHAS may make the certification that the application is consistent with the CHAS.

Section 415(b)(17)(ii) has been amended to delete the requirement that an IHA demonstrate that its proposed homeownership program is consistent with the tribal plan. This amendment will simplify the program for entities that lack the administrative resources to carry out detailed planning.

Section 415(b)(19), Resident Interest, has been amended to provide that, where there is more than one resident organization, the application must so indicate and state the result of a resident vote, conducted by a disinterested third party, designating one resident organization to submit a board resolution supporting the application.

A new section 415(b)(21), Nonduplication of Funding, has been added to require the application to contain a certification that the applicant has not and will not receive assistance from the Federal government, a State, or a unit of general local government, or any agency or instrumentality thereof, for activities for which funding is requested in the application.

Section 415(c), Screening, has been clarified.

Section 420(a) has been clarified to indicate that in determining whether the proposed program would result in appreciably reducing in the locality the number of affordable rental housing units, the appropriate universe is the multifamily stock. The ambiguous "of the type to be assisted" description of the universe of units has been deleted.

A new item has been added to the threshold criteria as § 420(i): The application meets all other program requirements. This will assure only approvable applications receive further processing.

Section 425(a)(1), the rating criterion entitled Capability, has been amended to permit HUD to assign points based on an explanation of how applicant capability for developing a successful and affordable homeownership program will be obtained.

Section 425(a)(2), the rating criterion entitled Quality of the Program, has been amended by increasing the maximum points for subcriterion (i) from 5 to 15 and increasing the points for subcriterion (ii) from 5 to 10. In addition, instead of assigning no points under subcriterion (ii) where no economic development activities are being proposed, the maximum points for subcriterion (i) will be increased to 25 if no assistance for operating assistance is being requested and if the application demonstrates that no economic development assistance is needed.

Section 425(a)(6), the rating criterion entitled MBE/WBE Goals, has been modified to provide that, in determining the extent to which an applicant demonstrates a firm commitment to promoting the use of minority business enterprises or women-owned businesses, HUD will especially consider resident-owned businesses.

Section 425(a)(7)(ii), the rating subcriterion entitled Efficiency, has been amended to retain only factors (A) and (C) (redesignated as factor (B)). Some of the factors would have necessitated submission of additional detailed information by the applicant to evaluate items that would have resulted in small point differences on the overall criterion rating. Some of the factors could have resulted in giving more points to an application that had higher acquisition and rehabilitation costs but did not propose a full range of other activities that would be important to success, such as counseling and training for homebuyers, economic development activities, and technical assistance for resident organizations. Conversely, a project that required little or no rehabilitation would have received a lower score even when its per-unit costs were low.

While recognizing the importance of cost efficiency, HUD has determined that the significant elements are the cost per unit of the overall grant amount, the degree to which matching contributions are pledged in cash and other firm commitments, and the amount of matching funds in excess of the 33 percent requirement that will be provided.

Section 425(b), Environmental Review, has been amended to permit HUD to adjust rating scores based on its environmental review when it determines environmental impact mitigation would result in excessive costs. The previous guidelines permitted adjustment only in cases of time delays.

A new section 425(c)(5) has been added governing what happens if HUD discovers procedural errors at various stages of review and selection.

Section 425(d), Reduction in Requested Grant Amounts, has been amended to clarify that HUD may not only approve an application for an amount lower than requested but may also adjust line items in the proposed budget within the amounts requested. The references to section 102(d) of the HUD Reform Act have been deleted since implementing regulations under 24 CFR part 12, subpart D, have not yet become effective.

Part V. Other Requirements

Section 505(c)(2) as published on February 4 stated that only Indian tribes and IHAs that exercise their powers of self-government were subject to the requirements of the Indian Self-Determination and Education Assistance Act. This is incorrect; the section has been corrected by deleting the incorrect modifier ("as described in section 505(a)(2)").

Section 505(d), Minority and Women's Business Enterprises, has been amended to clarify that, in the case of applications submitted by Indian tribes or IHAs, compliance with various requirements concerning minority and women's business enterprises must be consistent with, but not in derogation of, the Indian Self-Determination and Education Assistance Act.

Section 530, Conflict of Interest, has been modified to provide that a resident of an eligible property may acquire a homeownership interest even if he or she would otherwise be excluded by paragraph (a). This will avoid the need for processing applications for exceptions to paragraph (a).

Section 545 is new. Where the applicant is, or proposes to contract with, a primarily religious organization or a wholly secular organization established by a primarily religious organization, the organization shall undertake its responsibilities with respect to the homeownership program in accordance with three specified principles.

Part VI. Grant Agreement—Planning and Implementation Grants

Section 601(c) has been clarified to state that HUD may take any appropriate action authorized under the grant agreement if HUD determines the recipient is failing to carry out the program as required. The authority for HUD to take action where it determines a recipient "is likely to fail" has been deleted. On reconsideration, HUD has determined sanctions should be imposed only where a recipient is actually failing to comply with program requirements, not where HUD believes it probably will fail.

Part VII. Implementation of Planning and Implementation Grants

Section 701(d) has been deleted, since it is not appropriate for HUD to provide tax advice to program recipients.

Section 720, Restrictions on Resale by Initial Homeowners, has been reorganized. The provisions limiting the equity interest that an initial homeowner may retain from sale during the first six years of homeownership has been moved to subsection (c) from paragraph (b)(1)(ii)(B). The guidelines published February 4, 1991 were structured in a way that suggested that the resale restrictions during the first six years applied only where the family acquired the property for less than fair market value. HUD does not believe this was the intent of Congress and has reorganized the section accordingly to remove the ambiguity.

Paragraph (a)(2), Right to Purchase, has been amended to set deadlines for RMCs, RCs, and cooperatives that decide to purchase units from homeowners. Such entities would have 10 days after receiving notice of a firm contract between a homeowner and a prospective buyer to decide whether to exercise its prior right to purchase and 60 additional days to complete closing of the purchase. Where a PHA/IHA or the recipient has a prior right, it would be subject to the same deadlines.

Paragraph (b)(1)(i) has been clarified regarding how the amount of a promissory note, where required, is determined.

In addition, paragraph (c) has been amended. HUD has determined that the inflation adjustment made to the equity a homeowner has in the property should apply to equity that is the result of sweat equity. Accordingly, the guidelines have been amended to provide that the contribution to equity paid by a family may be provided in the form of cash or the value of sweat equity. In addition, the guidelines now provide that the value of any improvements made by the family during the time it owns the home includes improvements made through sweat equity. Sweat equity was previously excluded for purposes of computing inflation adjustments to a family's equity. Finally, a new paragraph (c)(3) has been added to clarify that amounts that count towards a family's equity may not also count towards the match.

Part IX. Waiver Authority

Section 901 has been amended to delete the provision that HUD will not waive deadlines for receipt of

applications. The policy has not changed, but the guidelines are not the appropriate place for the limit on HUD's waiver authority since the deadline is in the NOFA. The NOFA states this policy.

Part X. Other Matters

Information Collections

The information collection requirements contained in these amended guidelines have been approved through April 30, 1992 by the Office of Management and Budget and assigned OMB control number 2502-0451. Information on these requirements is provided as follows:

Description	No. of respondents	No. of responses per respondent	Total annual responses	Hours per response	Total
Applications:					
§ 310	100	1	100	40	4,000
§ 315	100	1	100	80	8,000
Recordkeeping:					
§§ 801 & 805	60	1	60	44	2,640
					14,640

Impact on the Economy

The amendments to these guidelines would not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it would, as defined by that order, not have (a) an annual effect on the economy of $100 million or more; or (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. At the time of publication of the final rule for the program, HUD will update its regulatory impact analysis, based on any comments received.

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 7th Street, SW., Washington, DC 20410.

Impact on the Family

The General Counsel, as the designated official under Executive Order 12606, The Family, has determined that the amendments to the guidelines do not have a potential significant impact on the formation, maintenance, and general well-being of the family. Achievement of homeownership by low-income families in the program under the guidelines, as amended, can be expected to support family values, by helping families achieve security and independence; by enabling them to live in decent, safe, and sanitary housing; and by giving them the skills and means to live independently in mainstream American society

Federalism Impact

The General Counsel has also determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that the amendments to these guidelines are closely based on statutory requirements and impose no significant additional burdens on States or other public bodies. The notice does not affect the relationship between the Federal government and the States and other public bodies or the distribution of power and responsibilities among various levels of government. Therefore, the policy is not subject to review under Executive Order 12612.

Semiannual Agenda

These Guidelines were listed as item number 1330 in the Department's Semiannual Agenda of Regulations published at 56 FR 53380. 53392 on October 21, 1991 under Executive Order 12291 and the Regulatory Flexibility Act.

Impact on Small Entities

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that the amendments to the guidelines would not have a significant economic impact on a substantial number of small entities. The guidelines, as amended govern the procedures under which HUD would make assistance available to applicants under a program designed to provide homeownership opportunities to low-income families and individuals.

Editorial Note: These revised program guidelines will appear as an appendix to subtitle A of title 24 of the Code of Federal Regulations

Program Guidelines

Table of Contents

I. Purpose; Summary; and Relationship to Other Programs

Section 101. Purpose

The purpose of the HOPE 2 program is to provide homeownership opportunities for eligible families in certain multifamily developments.

Section 105. Summary

Under the HOPE 2 program, HUD makes planning grants and implementation grants to selected eligible applicants to assist them in developing and carrying out homeownership programs for eligible families. A recipient may use its implementation grant to acquire eligible property (unless it already owns the property), fund rehabilitation, and cover other eligible program costs. An eligible applicant may (but is not required to) apply for a planning grant to assist it in developing a homeownership program, including the development of resident organizations, feasibility studies, counseling and training of residents and homebuyers, activities necessary for the development of a homeownership program, and preparation of an application for an implementation grant.

An eligible applicant may apply for an implementation grant to fund activities necessary to carry out an approved homeownership program. Applicants may not submit an application for a planning grant and an implementation grant for the same property in response to any one notification of funding availability. Each recipient is required to assure that a specified portion of the HOPE implementation grant is matched for non-Federal sources. (Certain IHAs may be exempt; see section 410(d).) Units must meet specified housing quality standards, and eligible families may not be required to pay more than 30 percent of adjusted income per month for principal, interest, taxes, and insurance to complete a sale under the program.

Section 110. Relationship to other programs

(a) *Waiver of section 8 Regulations.* HUD may make section 8 authority available for use in support of the HOPE 2 program, and intends to approve requests for waivers of the certificate and housing voucher regulations to facilitate its use. Under the section 8 program, HUD makes rental assistance available to assist eligible families.

Owners of units under the section 8 program receive a housing assistance payment equal to the difference between the rent for the unit and the amount payable by the eligible family, which is, in most cases, 30 percent of the family's adjusted income. See 24 CFR parts 882 and 887 for the rules governing the section 8 Certificate and Housing Voucher programs.

To permit issuance of certificates and vouchers to otherwise eligible nonpurchasing residents who qualify as low-income families, HUD will determine that good cause exists and approve requests to waive—

(1) The provisions prohibiting issuance of certificates and vouchers based on the identity or location of the housing occupied by the family, since one purpose of providing section 8 assistance under the HOPE program is to aid nonpurchasing residents in eligible properties and section 8 assistance will be reserved for this purpose;

(2) The provisions establishing Federal preferences when the assistance is used for nonpurchasing residents, since the section 8 assistance is being made available for these families and it makes no sense to apply the preferences in this context; and

(3) The provisions limiting use of certificates and vouchers to very low-income families. (Section 413(a) of NAHA amended the 1937 Act to permit this waiver under the Voucher program.) HUD has determined that, under the law, nonpurchasing residents should be given section 8 assistance if permitted by law and, therefore, will provide for issuance of certificates and vouchers to low-income families, not only very low-income families.

Additional waivers may be necessary to make section 8 assistance readily available in support of the HOPE program. HUD will also consider requests for such other waivers.

HUD intends to issue final regulations amending the section 8 regulations to achieve these purposes when it publishes the final HOPE regulation.

(b) *Inapplicability of Other Acts.* Eligible property approved under HOPE 2 is not subject to (1) the Low-Income Housing Preservation and Resident Homeownership Act of 1990, or (2) the requirements of section 203 of the Housing and Community Development Amendments of 1978 applicable to the sale of developments either at foreclosure or after acquisition by HUD.

(c) *Reservation of Section 8 authority.* HUD may reserve authority to provide section 8 certificate and housing voucher assistance, to the extent necessary to provide rental assistance for a nonpurchasing resident who resides in an eligible property on the date HUD approves an implementation grant, for use by the resident elsewhere. In addition, subject to the availability of appropriations, HUD shall ensure that section 8 rental assistance is made available to nonpurchasing residents for use in the eligible property or elsewhere. HUD encourages PHAs/IHAs to make other section 8 assistance available for use in connection with the HOPE 2 program. See paragraph (a) of this section for a discussion of waivers of section 8 regulations to facilitate use of section 8 assistance.

(d) *Termination of Section 8 and Other Rental Assistance.* Project-based section 8 and other rental assistance shall be terminated (1) on the date an eligible property is transferred under the HOPE 2 program to an entity for transfer to eligible families or (2) if no transfer is proposed because the applicant or other entity already owns the property, on the effective date of an implementation grant agreement. The implementation grant may be used to cover any shortfall in operating income during the rental phase and after acquisition by eligible families.

(e) *Variations to FHA Single Family Mortgage Insurance Programs.* (1) All regulatory requirements and underwriting procedures established for the FHA single family mortgage insurance programs shall apply, except for the changes described in paragraph (e) of this section.

(2) In the single family FHA mortgage insurance programs there is a requirement for a down payment by the mortgagor in cash or the equivalent. Since a recipient under the HOPE 2 program may provide the down payment for the eligible family/mortgagor, section 429 of NAHA amended section 203(b)(9) of the National Housing Act to provide that the required down payment may be paid by a corporation or person other than the mortgagor if the mortgage covers a unit under the HOPE program. Therefore, the regulations at 24 CFR 203.19(b), 203.32(b), 234.28(c) and 234.55(b) were amended by an interim rule published on February 4, 1991, 56 FR 4476. These amendments provide that a mortgagor being assisted in the purchase of a housing unit in connection with the HOPE program may obtain a loan for the down payment from a corporation of another person under conditions satisfactory to HUD. In addition, a second mortgage may be placed against the property even though the entity holding a second mortgage is not a Federal, State, or local government agency, if the entity is designated in the homeownership plan of an applicant for an implementation grant under the HOPE programs.

II. Definitions

1937 Act. The United States Housing Act of 1937.

Administrative costs. Administrative costs that are reasonable and necessary, as described in and valued in accordance with OMB Circular A-87 or A-122 [1], as applicable, incurred by a recipient in carrying out a homeownership program under this notice. For purposes of complying with the 15 percent limitation in Section 405(b)(4), administrative costs do not include the costs of activities which are separately eligible under sections 405 or 410.

Applicant. For HOPE 2, the following entities that may represent the residents of the eligible property:

(a) An RMC (resident management corporation).

(b) An RC (resident council).

(c) A cooperative association.

(d) A public or private nonprofit organization.

(e) A pubilc body, including an agency or instrumentality thereof.

(f) A PHA (public housing agency).

(g) An IHA (Indian housing authority).

(h) A mutual housing association.

A cooperative association may be an eligible applicant only for eligible property it proposes to acquire and transfer ownership interests in to eligible families under a homeownership program.

CHAS. A comprehensive housing affordability strategy under section 105 of NAHA. See 24 CFR part 91.

Cooperative association. An association organized and existing under applicable State and local, or tribal, law primarily for the purpose of acquiring, owning, and operating housing for its members or shareholders, as applicable.

Eligible family. (a) A low-income family; or

(b) A family or individual who is a resident of the eligible property on the date HUD approves an implementation grant.

Eligible property. A multifamily rental property, containing five or more units, that is—

(a) Owned by HUD;

(b) Financed by a loan or mortgage held by HUD or insured by HUD, including loans under the Section 312 Rehabilitation Loan program, the Section 202 program, and the FHA

[1] See Section 510(b) concerning the availability of OMB Circulars.

Multifamily Mortgage Insurance programs;

(c) Determined by HUD to have serious physical or financial problems under the terms of an insurance or loan program administered by HUD (in most cases, such properties will also be eligible under (b)); or

(d) Owned or held by the Secretary of Agriculture, the Resolution Trust Corporation, or a State or local government.

Homeownership program. A program for homeownership that meets the requirements under this notice. The program shall provide for acquisition by eligible families of ownership interests in the units in an eligible property under an ownership arrangement approved by HUD under this notice, for occupancy by the eligible families. At least 66 percent of the units must be acquired by eligible families (or such higher percentage as may be required under State, local, or tribal law governing cooperative associations or other forms of homeownership used under the program). No more than 34 percent of the units may be occupied by renters. At least 80 percent of units acquired for homeownership must be acquired by low-income families (or such higher percentage as may be required under such State, local, or tribal law). In addition, no unit may be acquired by a family whose annual income exceeds 95 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 95 percent of the median income for the area on the basis of its finding that such variations are necessary because of the prevailing levels of construction costs or unusually high or low family incomes.

HUD. The United States Department of Housing and Urban Development.

IHA. An Indian housing authority, which means any entity that—

(a) Is authorized to engage in or assist in the development or operation of low-income housing for Indians; and

(b) Is established (1) by exercise of the power of self-government of an Indian tribe independent of State law; or (2) by operation of State law providing specifically for housing authorities for Indians, including regional housing authorities in Alaska.

Low-income family. A family or individual that qualifies as a low-income family under 24 CFR part 813. NAHA changed the term lower income family to low-income family; these terms have the same meaning. In general, this regulation defines the term lower income family as a family whose annual income does not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 80 percent of the median income for the area on the basis of its finding that such variations are necessary because of the prevailing levels of construction costs or unusually high or low family incomes.

Mutual Housing Association. A private entity organized under State law that has been determined to be a tax-exempt entity under section 501(c) of the Internal Revenue Code of 1986 and that owns, manages, and continuously develops affordable housing by providing long-term housing for low- and moderate-income families. The residents of mutual housing participate in the ongoing management of the housing, and through the purchase of membership interests in the associations, have the right to continue residing in the housing as long as they own memberships in the associations.

NAHA. The Cranston-Gonzalez National Affordable Housing Act, Public Law 101–625.

NOFA. Notice of Fund Availability.

Nonprofit organization. Any nonprofit organization that—

(a) Is organized and existing pursuant to Federal, State, local, or tribal law;

(b) Has no part of its net earnings inuring to the benefit of any individual, corporation, or other entity;

(c) Has a voluntary board;

(d) Has an accounting system or has designated a fiscal agent in accordance with requirements established by HUD; and

(e) Practices nondiscrimination in the provision of assistance.

Ownership interest. Ownership by an eligible family by fee simple title to a unit in an eligible property (including a condominium unit), ownership of shares of or membership in a cooperative, or another form of ownership proposed and justified by the applicant and approved by HUD. The ownership interest may be subject only to (a) the restrictions on resale required or approved under Section 720; (b) mortgages, deeds of trust, or other liens or instruments securing debt on the property as approved by HUD; or (c) any other restrictions or encumbrances which do not impair the good and marketable nature of title to the ownership interest. Mutual housing is eligible only to the extent it provides for the transfer of ownership interests to eligible families.

PHA. A public housing agency, which means any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of low-income housing.

Private nonprofit organization. A nonprofit organization that is privately controlled and that is a tax exempt entity under section 501(c) of the Internal Revenue Code of 1986. For purposes of this requirement, private nonprofit organizations shall have governing bodies which are controlled 51 percent or more by private individuals who are acting in a private capacity. For purposes of this provision, an individual is considered to be acting in a private capacity if the individual is not legally bound to act on behalf of a public body (including the applicant or recipient), and is not being paid by a public body (including the applicant or recipient) while performing functions in connection with the nonprofit organization.

Public body. Any State of the United States; any city, county, town, township, parish, village, or other general purpose political subdivision of a State; the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa, the Federated States of Micronesia and Palau, the Marshall Islands, or a general purpose political subdivision thereof; any Indian tribe, as defined in title I of the Housing and Community Development Act of 1974; any public agency or instrumentality of any of the foregoing jurisdictions which is created by or pursuant to State or local, or tribal, law and for which the applicable jurisdiction has agreed to accept financial responsibility in the event of any noncompliance or liability under the HOPE 2 program; and any PHA or IHA. For purposes of this definition, an organization which meets the requirements of paragraphs (a) and (b) of the definition of nonprofit organization, but is controlled 51 percent or more by public officials acting in their official capacities, may qualify as a public body.

RC. A resident council, which means any incorporated nonprofit organization or association that—

(a) Is representative of the residents of the eligible property;

(b) Adopts written procedures providing for the election of specific officers on a regular basis (but at least once every three years); and

(c) Has a democratically elected governing board, elected by the residents of the eligible property, the voting membership of which consists of residents of the property.

Recipient. An applicant approved to receive a grant under this notice or such other entity specified in the HUD-approved application that will assume the obligations of the recipient under this notice.

RMC. A resident management corporation that proposes to enter into, or enters into, a management contract with the owner for an eligible property and that—

(a) Is a nonprofit organization that is incorporated under the laws of the State or tribe in which it is located;

(b) May be established by more than one resident organization or RC, so long as each such organization or RC (1) approves the establishment of the RMC and (2) has representation on the board of directors of the RMC;

(c) Has an elected board of directors;

(d) Has by-laws that require the board of directors to include representatives of each resident organization or RC involved in establishing the corporation;

(e) Provides that its voting members are residents of the eligible property it manages or will manage under a homeownership program and of any other property or public or Indian housing developments;

(f) Is approved by the RC; if there is no RC, a majority of the households of the eligible property shall approve the establishment of an RC to determine the feasibility of establishing a corporation to manage the property; and

(g) May serve as both the RMC and the RC, so long as the RMC qualifies as an RC.

III. Planning Grants

Section 301. Planning grants.

(a) *General Authority.* HUD will make HOPE 2 planning grants to applicants for the purpose of developing homeownership programs under this notice. HUD shall select applications based on a national competition. HUD will assure compliance with the requirement for national geographic diversity by selecting at least three planning grants in each of the 10 HUD Regions, to the extent sufficient funds are available.

(b) *Mini or Full Planning Grants.* Applicants may request a full planning grant covering all necessary planning activities specified in Section 305 or a mini planning grant. Mini planning grants, generally for establishing or increasing the capacity of the applicant to apply for and carry out a specific homeownership program, may cover some or all of the activities specified in Section 305 (a), (b), and (c). An applicant may request a mini planning grant and, pursuant to a subsequent NOFA, a full planning grant, but in no case may a full planning grant duplicate previously funded activities.

(c) *Grant Cap.* The amount of a planning grant (or the total amount of a mini planning grant and a full planning grant) under this section may not exceed $200,000, except that the Secretary may for good cause approve a grant in a higher amount, based on a justification submitted by the applicant demonstrating that the costs are reasonable. The maximum amount for a mini planning grant shall be $100,000, except that HUD may for good cause approve a grant in a higher amount, based on a justification submitted by the applicant demonstrating that the costs are reasonable. Where the proposed program provides for homeownership opportunities using more than 250 units, no additional demonstration of good cause for approving a planning grant of more than $200,000 (or of more than $100,000 in the case of mini planning grants) is required if the additional amount requested is not more than $800 for each unit over 250 for a planning grant (or not more than $400 for each unit over 250 for a mini planning grant).

(d) *Deadline for Completion of Activities.* Activities funded under a mini planning grant shall be carried out within 18 months of the effective date of the mini planning grant agreement. Full planning grants shall be carried out within three years of the effective date of the full planning grant agreement (or within 18 months of such effective date if HUD has approved a mini planning grant for the proposed program).

Section 305. Eligible planning grant activities.

Planning grants may be used for the reasonable costs of eligible activities necessary to develop homeownership programs. Only costs incurred on or after the effective date of the grant agreement qualify for funding under the program. Eligible activities include—

(a) *Development of RMCs and RCs.* Development of RMCs and RCs in connection with a specific homeownership program, including activities such as—

(1) Consulting and legal assistance to incorporate the entity;

(2) Preparing by-laws and drafting a corporate charter;

(3) Designing and implementing personnel policies; performance standards for measuring staff productivity; policies and procedures covering organizational structure, recordkeeping, maintenance, insurance, occupancy, and management information systems; and any other recognized functional responsibilities relating to property management;

(4) Designing and implementing financial management systems that include provisions for budgeting, accounting, and auditing; and

(5) Administrative costs necessary to the implementation of the activities specificed in paragraphs (a)(1)–(4) of this section.

(b) *Training and Technical Assistance.* Training and technical assistance for applicants related to development of a specific homeownership program. This activity may cover such topics as establishing community organization, outreach, and support systems; legal requirements for establishing cooperative, condominium, and other homeownership entities; and the role of the board of directors in an RMC.

(c) *Feasibility Studies.* Studies of the feasibility of a specific homeownership program, including whether the program can be designed to meet the affordability standards under the notice and achieve financial feasibility.

(d) *Preliminary Architectural and Engineering Work.* Preliminary architectural and engineering work, including work necessary to support cost estimates included in an implementation grant application.

(e) *Counseling and Training.* Resident and homebuyer counseling and training. This activity may cover such topics as the various ways to become a homeowner (such as cooperative and fee simple ownership) and financing alternatives.

(f) *Economic Development.* (1) Planning for economic development, job training, and self-sufficiency activities that promote economic self-sufficiency of eligible families who will become homeowners under the homeownership program.

(2) The application shall demonstrate that the proposed activities are directly related to implementation of the proposed homeownership program, and describe how these activities promote self-sufficiency.

(3) The aggregate amount of planning and implementation grants that may be used for economic development activities may not exceed $250,000 for any single homeownership program.

(g) *Security Plans.* Development of security plans. This activity may cover assessing the need for the hiring of security personnel and creating tenant patrols, for negotiating agreements with local law enforcement agencies, and for providing security systems.

(h) *Appraisal.* Cost of appraisals related to the program.

(i) *Application for Implementation Grant.* Preparation of an application for an implementation grant under this notice.

(j) *Other Activities.* Other activities proposed and justified as necessary for the development of a homeownership program by the applicant and approved by HUD.

Section 310. Applications for planning grants.

(a) *NOFA.* An application for a planning grant shall be submitted by an applicant in accordance with this notice and the NOFA. An applicant may submit an application for either a planning grant or an implementation grant, but not both, for any one eligible property. The NOFA advises potential applicants how to obtain an application package and establishes deadlines and other requirements for submission of applications. The NOFA also informs each applicant that it may request information and guidance from HUD about program requirements and preparation of the application.

(b) *Application Contents.* Each application shall contain the information required by the application package, which shall include at least the following items.

(1) *Request for Planning Grant.* (i)(A) The application shall contain a summary description of the proposed homeownership program and a request for a planning grant (specifying whether the application is for a mini planning grant or a full planning grant), (B) the schedule for completing the activities, (C) the personnel necessary to complete the activities, and (D) the amount of the grant requested (including justification for a grant request exceeding $200,000 if the development has 250 or fewer units or exceeding the per unit limitations if the development has more than 250 units).

(ii) An application for a full planning grant shall contain sufficient detail for HUD to determine whether the proposed homeownership program will cover all eligible activities necessary to make the proposed program feasible, whether or not the application requests HUD funding for each activity.

(iii) Where no resident entity has been established for the property, the application shall propose establishment of such an entity (such as an RMC, RC, or cooperative association) promptly after the effective date of the grant agreement.

(2) *Qualifications and Experience of Applicant.* (i) The application shall describe the applicant and contain a statement of its qualifications. HUD encourages unincorporated resident organizations to work with an eligible applicant to develop a planning grant application under which the resident organization could work toward applicant status for an implementation grant request. HUD also encourages two or more entities to submit applications together. For example, an application submitted by a newly established RC and an experienced nonprofit organization may greatly increase the likelihood of the success of the proposed homeownership program. The application shall specify which entity will be the recipient and execute the grant agreement and include a certification that the entities have entered into a written agreement between them that delineates their respective roles.

(ii) An application from a private nonprofit organization that has applied for tax exempt status under section 501(c) of the Internal Revenue Code of 1986 on or before the date of application may be considered so long as the organization is approved before the effective date of the grant agreement.

(3) *Eligible Property.* The application shall identify and describe the eligible property involved, and describe the composition of the residents, including family size and income, and racial, ethnic, and gender characteristics of the residents, as required by HUD and as described in the application package. In addition, the application shall describe the neighborhood in which the property is located and include a map showing the location of the property and the racial and ethnic characteristics of the neighborhood.

(4) *CHAS Certification.* (i) The application shall contain a certification by the public official, or his or her authorized representative, who submits the CHAS that the proposed activities are consistent with the approved CHAS of the State or unit of general local government within which the eligible property is located.

(ii) Paragraph (b)(4)(i) of this section shall not apply to an application submitted by an Indian tribe or IHA. Indian tribes and IHAs are not included in the definition of a "jurisdiction," the entity charged with submitting a CHAS. HUD has concluded that Indian tribes and IHAs need not submit a CHAS and need not submit a certification of consistency with a housing strategy.

(5) *Equal Opportunity Certifications.* (i)(A) The application shall contain a certification that the applicant will comply with the requirements of the Fair Housing Act, title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973; and the Age Discrimination Act of 1975, and will affirmatively further fair housing; or

(B) In the case of an application from an Indian tribe or IHAs, under the circumstances described in section 505(a)(2) of this notice, a certification that the applicant will comply with the Indian Civil Rights Act (25 U.S.C. 1301 *et seq.*), section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

(ii) The application shall contain a statement from the applicant (A) whether or not a desegregation order, agreement, or plan that applies to the applicant is in effect or known to the applicant to be under consideration; (B) that the applicant is not in violation of an existing desegregation order, compliance agreement, or voluntary agreement, or a statement describing the circumstances of the violation; and (C) describing any potential impact the proposed homeownership program may have on implementing any existing or pending order, agreement, or plan.

(6) *Statement of Interest in Making Property Available.* The application shall contain a signed statement from the owner of the eligible property (including a statement from the appropriate HUD or other government official where the property is owned or held by a governmental entity) that it is interested in selling the property for homeownership under the HOPE 2 program and it will not sell to anyone else for a reasonable period of time to give a reasonable opportunity to the applicant to apply for an implementation grant and to HUD to review and approve or disapprove it and, if approved, execute the grant agreement.

(7) *Resident Interest.* Where the applicant (or one of the applicants) is not an RMC or RC, the application shall contain a board resolution from the resident organization, if any, that it is interested in a homeownership program and that the applicant is submitting the application on behalf of the resident organization. Where there is more than one resident organization, the application shall so indicate and state the results of a vote by the residents, conducted by a disinterested third party, designating one resident organization for this purpose. In all cases, the application shall include a survey conducted by the applicant of resident interest in homeownership and marketability of the units, which shall be conducted in accordance with procedures set forth in the application package.

(8) *Nonduplication of Funding.* The application shall contain a certification

that the applicant has not and will not receive assistance from the Federal government, a State, or a unit of general local government, or any agency or instrumentality thereof, for activities for which funding is requested in the application.

(9) *Disclosures Required by the Reform Act.* Section 102(b) of the HUD Reform Act of 1989, Public Law 101–235 (December 15, 1989) requires disclosure of other information concerning other government assistance to be made available with respect to the program and parties with a pecuniary interest in the homeownership program, and submission of a report on expected sources and uses of funds to be made available for the program. Each application shall include the information required by 24 CFR part 12, subpart C, the regulation that implements section 102 of the Reform Act. An implementing notice for 24 CFR part 12, subpart C, is being published in the Federal Register. Applicants shall use the form and guidance contained in that notice to make the required disclosures.

(10) *Other Requirements.* The application shall contain certifications and other information required by the application package.

(c) *Screening by HUD.* (1) HUD shall screen each application submitted on or before the deadline set forth in the NOFA to determine whether it is complete, is internally consistent, and contains correct computations. Where HUD determines an application is deficient in one or more of these areas, it shall notify the applicant in writing and give it an opportunity to correct the deficiencies in its application. However, the applicant may not substantially revise the application, such as by substituting another eligible property or applicant or changing other fundamental features of the homeownership program, because that would not be fair to other applicants. The notification shall require applicants to submit additional or corrected material so it is received in the appropriate HUD office no later than close-of-business on the 14th calendar day after the date of the notification to the applicant giving it an opportunity to modify its application. HUD may not extend this deadline for actual receipt of the material for any reason. HUD shall not consider further any applications that do not meet one of the tests in the first sentence of paragraph (c)(1) of this section, after the opportunity, if any, to submit additional or corrected material.

(2) The purpose of the procedure is to increase the number of approvable applications so viable homeownership opportunities may be developed at the earliest possible time, while giving each applicant an equal opportunity to receive HUD assistance and correct deficiencies. HUD anticipates that many applicants will be relatively new and may need this additional opportunity to perfect their applications.

(Approved by the Office of Management and Budget under control number 2502–0451)

Section 315. Rating, ranking, and selection of planning grant applications.

(a) *Rating.* HUD shall review each application that qualifies for additional consideration under the screening procedures in section 310(c) and, for applications that meet all program requirements, assign points in accordance with the following selection criteria—

(1) *Capability.* The qualifications or potential capabilities of the applicant for developing a successful and affordable homeownership program. HUD shall assign points based on the past experience of the applicant, or an explanation of how such capability will be obtained, in the following categories:

(i) Developing or managing multifamily housing, or both—10 points.

(ii) Providing multifamily homeownership programs (for example, conversion of rental property to cooperative or condominium low-income homeownership, or developing financing programs for low-income homeownership)—10 points.

(iii) Organizing, developing, and training low-income neighborhood or low-income resident groups—10 points.

Maximum points for this criterion (1): 30 points.

(2) *Resident and Homebuyer Interest and Marketability.* The extent of resident and homebuyer interest in the development of a homeownership program for the eligible property. HUD shall assign points based on the percentage of current and potential residents interested in participating in the proposed homeownership program, based on a survey conducted by the applicant and submitted to HUD as part of the application. Only occupied units in the property shall be used to calculate the percentage of residents interested.

(i)(A) If 75 percent or more of the residents are interested: 10 points; or

(B) If 50–74.99 percent of the residents are interested: 5 points;

(C) If less than 50 percent of the residents are interested: 0 points.

and

(ii)(A) If 75 percent or more of the units occupied by nonpurchasers are occupied by residents willing to move and the application demonstrates all of the units in the property are marketable: 10 points;

(B) If 50–74.99 percent of the units occupied by nonpurchasers are occupied by residents willing to move and the application demonstrates all of the units in the property are marketable: 5 points; or

(C) If less than 50 percent of the units occupied by nonpurchasers are occupied by residents willing to move: 0 points.

If the vacancy rate for the property is 50 percent or more, the points for categories (ii) (A) and (B) shall be doubled and no points shall be assigned for categories (i) (A) and (B).

Maximum points for this criterion (2): 20 points.

(3) *Suitability of the Property.* The suitability of the eligible property for homeownership shall be determined based on—

(i) Proximity or accessibility of the property to places of employment, shopping, schools, medical facilities, transportation, places of worship, recreational facilities, and other necessary services for the families under the program—4 points;

(ii) Whether the surrounding neighborhood is free from conditions which are seriously detrimental to the quality of life; substandard dwellings or other undesirable elements affecting the eligible property must not predominate, unless the undesirable conditions are being actively mitigated—12 points; and

(iii) Whether the structure type and bedroom configuration are (or have the potential, through rehabilitation, to become) appropriate for the proposed homeownership program—4 points.

The purpose of this criterion is to assure that properties in neighborhoods completely unsuitable for homeownership are not selected. The review will be made in the context of where the eligible properties are typically located.

Maximum points for this criterion (3): 20 points.

(4) *Local Support.* The extent of cooperation or support, or both, from the unit of general local government, neighborhood organizations, and providers of services and resources appropriate to assist eligible families to achieve economic independence. In assigning points for this criterion, HUD shall consider—

(i) Evidence of support for the homeownership program, demonstrated through letters, resolutions, or other expressions of support from State or local governments, PHAs/IHAs, and community, civic, religious, or other entities—10 points; and

(ii) Evidence from entities other than the applicant that funds, services, or other resources will be made available

in support of the homeownership program, demonstrated through letters, resolutions, or other expressions of support from providers of services and other resources—10 points.

The highest number of points shall be assigned based on the quality, expected duration, and amount of support to the homeownership program.

Maximum points for this criterion (4): 20 points.

(5) *Efficiency.* The extent to which the applicant maximizes efficiency in its plan for use of a planning grant. The lower the cost of the planning grant per unit, the greater the efficiency.

Maximum points for this criterion (5): 10 points. Total number of points: 100 points.

(b) *Ranking and Selection to Assure National Geographic Diversity* (1) After assigning points to each application under paragraph (a) of this section, HUD shall rank the planning grant applications. HUD shall examine the ranking and, where it determines that applications falling below a certain point total are not suitable or not feasible for homeownership under the program, it may establish a minimum number of points for an application to be selected. HUD shall then select the three highest ranking applications from each of the 10 HUD Regions.

(2) HUD shall then select the highest ranking remaining applications, without regard to their location.

(3) If two or more applications have the same number of points, the application with the most points for capability shall be selected. If there is still a tie, the application with the most points for suitability of property shall be selected.

(4) When the amount remaining after funding as many of the highest ranking applications as possible is insufficient for the next highest ranking application, HUD may determine whether funding a lower grant amount is feasible. Alternatively, HUD may skip to the next highest ranking application or applications that can be funded with the remaining amount.

(5) Procedural errors discovered after initial ratings but before notification of applicants shall be corrected and rankings revised. Procedural errors discovered after notification of approved applicants which, if corrected, would result in approval of an application which was not approved will be corrected by funding the application from any unused amounts or "off the top" from amounts available for planning grants in the next funding round.

(c) *Reduction in Requested Grant Amounts.* HUD shall approve a planning grant application for an amount lower than the amount requested or adjust line items in the proposed budget within the amount requested (or both) if it determines the amount requested for one or more eligible activities is unreasonable or unnecessary or does not otherwise meet applicable cost limitations established for the program.

(d) *Notification of Approval or Disapproval.* After completion of the ranking and selection of applications, but no later than six months after the date of submission of the application, HUD shall notify the selected applicants and the applicants that have not been selected, in writing. HUD's notification to the applicant of the amount of the grant award, based on the approved application, shall constitute a grant obligation by HUD, subject to acceptance by the applicant by the deadline specified in the notification.

(e) *Use of Remaining Amounts to Fund HOPE 2 Implementation Grants.* Any amounts available to fund planning grants that are not needed because there are insufficient approvable applications shall be used to fund the highest ranked, unfunded implementation grant applications.

(f) *Insufficient Approvable Applications.* If funds remain after HUD approves all approvable applications, including implementation grant applications, as provided in this notice, HUD may publish a NOFA inviting applications for planning or implementation grants, or both, in accordance with this notice, or invite applicants who submitted applications that could not be funded to submit amended planning grant or implementation grant applications in accordance with this notice within a deadline specified in the invitation.

(g) *Environmental Review* HUD has determined that its approval of applications for planning grants is categorically excluded from environmental review and compliance requirements of the National Environmental Policy Act of 1969 (NEPA) and that other Federal environmental laws and authorities listed in 24 CFR 50.4 are not applicable. The reason is that planning grants involve no rehabilitation and little or no physical change and that, generally, not enough information is available about the proposed homeownership program at this point to make the review. HUD has excluded planning grant applications from environmental assessment under NEPA and exempted planning grant applications from environmental review under the laws and authorities listed in 24 CFR 50.4. See the interim rule amending 24 CFR part 50 that is published elsewhere in today's edition of the **Federal Register.** Applicants are reminded, however, that environmental review at the implementation grant stage may nevertheless result in disapproval.

IV. Implementation Grants

Section 401. Implementation grants.

(a) *Implementation Grants.* HUD shall make implementation grants to applicants for the purpose of carrying out homeownership programs approved under this title.

(b) *National Competition.* HUD shall select applications based on a national competition. HUD will assure compliance with the requirement for national geographic diversity by selecting at least one implementation grant application for a program in each of the 10 HUD Regions, to the extent sufficient funds are available.

(c) *Overall Limitation on Grant Amount.* The amount requested for an implementation grant for each unit may not exceed 120 times the current published fair market rent for existing housing for that unit size established by HUD under section 8(c) of the 1937 Act. (The fair market rent is multiplied by 120 to convert it to an amount representing 10 years' worth of rents (12 (the number of months in a year) times 10 (the number of years).)

Section 405. Eligible implementation grant activities.

(a) *Limitations.* Implementation grants may be used for the reasonable costs of eligible activities necessary to carry out homeownership programs. Only costs incurred on or after the effective date of the grant agreement qualify for funding under the program.

(b) *Eligible Activities.* Eligible activities include—

(1) *Architectural and Engineering Work.* Architectural and engineering work, and related professional services required to prepare architectural plans or drawings, write-ups, specifications, or inspections.

(2) *Implementation of Homeownership Program*—(i) *General.* Implementation of the homeownership program, including—

(A) Acquisition of the eligibility property for the purpose of transferring ownership to eligible families in accordance with a homeownership program that meets the requirements under this notice (where the applicant owns the eligible property or where HUD otherwise determines that an "arms length" relationship for acquisition does not exist, program

funds may not be used for acquisition of the property for the program);

(B) The provision of assistance to families to make acquisition by them affordable (including interest rate reductions ("interest rate buy-downs") and down payment assistance).

(ii) *Maximum Acquisition Costs.* (A) The cost of acquiring an eligible property (by an applicant or other entity for transfer to eligible families or by eligible families), which may not exceed the as-is fair market value of a property for residential use, taking into account any applicable low-income use restrictions, determined in accordance with a recent appraisal conducted under procedures established or approved by HUD, plus reasonable and customary closing costs charged for comparable transactions in the market area.

(B) The applicant may acquire an eligible property where the debt exceeds the fair market value only if the excess will not be the responsibility of the recipient or homeowners. The excess debt may not be counted towards the match.

(C) For example—

(*i*) If the proposed acquisition cost (including debt) is $2 million and the appraised value is $2 million, up to $2 million of program funds (the HUD grant and the contributions towards the match) may be used for acquisition.

(*ii*) If the proposed acquisition cost (including debt) is $2 million and the appraised value is $2.25 million, up to $2 million of program funds (the HUD grant and the contributions towards the match) may be used for acquisition, and HUD will count $250,000 of excess value towards the match.

(*iii*) If the proposed acquisition cost (including debt) is $2.25 million and the appraised value is $2 million, up to $2 million of program funds (the HUD grant and the contributions towards the match) may be used for acquisition. The application would have to demonstrate how the excess cost of $250,000 will be supported by the program (other than by the recipient or the homeowners). The $250,000 could not be counted towards the match.

(iii) *Maximum Cost of Acquisition and Rehabilitation.* The maximum cost of acquisition and rehabilitation shall be the lower of (A) the as-is fair market value of the property (see paragraph (b)(2)(ii)) of this section, plus the actual cost of rehabilitation or (B) the applicable maximum dollar limitation (including any high-cost area adjustments) that applies to property refinanced and repaired pursuant to section 223(f) of the National Housing Act, which shall be included in the application package or otherwise provided by HUD.

(3) *Rehabilitation.* (i) Rehabilitation of the eligible property covered by the homeownership program, in accordance with standards established by HUD (see paragraph (b)(2) of this section for applicable cost limitations covering both acquisition and rehabilitation and section 505(b) for applicable requirements for accessibility for people with disabilities). The property shall be rehabilitated (including the provision of suitable amenities) to a level that makes it marketable for homeownership if the market area to families with incomes at or below the median for the area. HUD encourages applicants to undertake high quality rehabilitation, even if it goes beyond applicable minimum standards. Luxury items (fixtures, equipment, and landscaping of a type or quality which substantially exceeds that customarily used in the locality for properties of the same general type as the property to be rehabilitated) do not qualify as eligible expenses. The construction of swimming pools is not eligible. The cost to fill in or eliminate a pool from the property and the cost to repair an existing pool are eligible.

(ii) The application shall describe all improvements to be made to, or amenities to be provided for, the property, whether or not they may be funded by use of grant amounts, contributions towards the match required under the program, or other funds. HUD may disapprove improvements or amenities specified in the application it determines are unsuitable for the HOPE program, even if they will be paid for from non-program funds.

(iii) If an applicant proposes to make improvements to an eligible property beyond those that qualify as eligible costs, it shall assure that their entire cost will be covered by funds other than the HOPE grant and any amounts contributed towards the match and that the affordability of the property will not be impaired. No such local funds may count towards the match.

(iv) The cost of the rehabilitation shall be reasonable and in accordance with the requirements of paragraph (b)(2)(iii) of this section and other applicable requirements under this notice.

(4) *Administrative Costs.* Administrative costs of the program. The total amount that may be spent on administrative activities from the amount of the grant and any contribution towards the match may not exceed 15 percent of the amount of the grant HUD provides under this notice.

(5) *Development of RMCs and RCs.* Development of RMCs and RCs, but only if the applicant has not received a HOPE planning grant for such activities. See § 305(a) for examples of eligible activities.

(6) *Counseling and Training.* Counseling and training of homebuyers and homeowners under the homeownership program. This may include such subjects as counseling and training related to personal financial management, home maintenance, home repair, construction skills (to the extent appropriate, especially where the eligible family will do some of the rehabilitation), and the general rights and responsibilities of a homeowner.

(7) *Relocation.* Relocation of residents who elect to move, in accordance with section 735.

(8) *Temporary Relocation.* Any necessary temporary relocation of residents during rehabilitation, in accordance with section 735.

(9) *Assistance for Operating Expenses.* (i) Funding of operating expenses for the property, to the extent necessary to achieve long-term affordability, as provided in section 415(b)(12). Assistance for operating expenses may cover the period beginning after acquisition of the property by the applicant (or after the effective date of the implementation grant if the recipient of other entity that will transfer the property to eligible families already owns the property). Operating assistance may be used for (A) assistance for potential homeowners during the rental phase (before acquisition of ownership interests by the families), if any, (B) assistance for nonpurchasing residents who remain in the property but for whom section 8 assistance is not available, (C) assistance for homeowners after transfer of ownership interests to the families during the term of the grant agreement, and (D) the funding of operating reserves.

(ii) In addition, assistance for operating expenses may be drawn down under the grant agreement to fund an operating expenses reserve established in accordance with HUD guidelines, and the interest earned on the reserve shall be credited to it for use for operating expenses under the program.

(iii) An implementation grant under this program may provide assistance for operating expenses for up to five years from the date that the applicant or other entity acquires the eligible property (or, if the applicant or other entity already owns the property, from the effective date of the implementation grant agreement). If HUD determines that extraordinary circumstances exist, as demonstrated in the application or at

the end of the five-year term, that justify extension of the five-year term, it may, at the end of the five-year term, agree to extend the original grant agreement for additional one-year terms, subject to the availability of appropriations for this purpose. However, the total term of the grant agreement, including all extensions, may not exceed 10 years. HUD reminds applicants that the selection criterion measuring efficiency will favor applications proposing lower per unit costs; thus, those applications which propose operating assistance for five years or less will be at a competitive advantage.

(iv) The entity with fiduciary responsibility for any operating reserve shall be bonded, in accordance with requirements prescribed or approved by HUD.

(10) *Replacement Reserves.* (i) Replacement reserves for the property, up to the amount necessary to achieve long-term affordability, as provided in Section 415(b)(12). Assistance for replacement reserves may be drawn down under the grant agreement to fund the reserve established in accordance with HUD guidelines, and the interest earned on the reserve shall be credited to the reserve for use for replacement expenses under the program.

(ii) The entity with fiduciary responsibility for any replacement reserve shall be bonded, in accordance with requirements prescribed or approved by HUD.

(11) *Legal Fees.* Customary and reasonable costs of professional legal services.

(12) *Ongoing Training Needs.* Defraying costs for the ongoing training needs of the recipient for courses of instruction that are directly related to developing and carrying out the homeownership program.

(13) *Economic Development.* (i) Economic development activities that promote economic self-sufficiency of homebuyers, residents, and homeowners under the homeownership program, such as job training or retraining and the development, in or near the eligible property, of child care centers that offer work and make it possible for parents to work. The recipient shall enter into written agreements with the providers of economic development services specifying the services to be provided, including estimates of the numbers of homebuyers, residents, and homeowners to be assisted.

(ii) In addition, planning for the establishment of for- or not-for-profit small businesses by or on behalf of residents, job training, and other activities that promote economic self-sufficiency of homebuyers and homeowners of the eligible property covered by the homeownership program and economic development of the neighborhood are eligible.

(iii) The aggregate amount of planning and implementation grants that may be used for economic development activities may not exceed $250,000.

(14) *Other Activities.* Other activities proposed by the applicant, to the extent the applicant justifies them as necessary for the proposed homeownership program and HUD approves them. For example, the applicant may propose activities related to security needs of the property that are not otherwise covered under other eligible activities, such as under architectural and engineering work and rehabilitation activities.

Section 410. Matching requirements for implementation grants.

(a) *Requirement for Each Recipient to Match the HUD Grant.* Each recipient shall assure that matching contributions equal to not less than 33 percent of the amount of the implementation grant shall be provided from non-Federal sources to carry out the homeownership program. Amounts contributed to the match shall be used for eligible activities or in accordance with this section. Any grant amounts proposed for operating assistance shall be excluded for purposes of computing the amount of the match.

(b) *Form.* Contributions may only be in the form of—

(1) *Cash Contributions.* (i) Cash contributions from non-Federal resources. To be a cash contribution, funds must be contributed permanently for uses under the HOPE 2 program. Funds will be considered permanently contributed if all repayment, interest, and other return on the contribution will only be used for eligible activities in accordance with program requirements.

(ii) Non-Federal resources may not include funds from a Community Development Block Grant made to an entitlement grantee or a State under section 106(b) or section 106(d), respectively, of the Housing and Community Development Act of 1974, except to the extent permitted for administrative expenses under paragraph (a)(2) of this section. Non-Federal resources may not include Federal tax expenditures, comprehensive grants under section 14 of the 1937 Act, or amounts provided to the development from syndication of the low income housing tax credit. (Financing involving the use of the low income housing tax credit is prohibited by Section 415(b)(11)(iii).)

(iii) Non-Federal resources may include contribution of trust funds held by Federal agencies for Indian tribes.

(iv) A cash contribution may be made by the applicant, non-Federal public entities, private entities, or individuals. A cash contribution may be made from program income from a Federal grant earned after the end of the award period if no Federal requirements govern the disposition of the program income. Included in this category are repayments from closed out grants under the Urban Development Action Grant Program (24 CFR part 570, subpart G), and the Housing Development Grant Program (24 CFR part 850).

(v) The grant equivalent of a below-market interest rate loan to the homebuyer, where all repayments, interest, and other return will not be permanently contributed to the HOPE program, may be counted as a cash contribution.

(A) If the loan is made from proceeds of obligations issued by or on behalf of a public body that are exempt from taxation by the United States, the contribution is the present discounted cash value of the difference between payments to be made on the borrowed funds and payments to be received from the loan to the homebuyer, based on a discount rate equal to the interest rate on the borrowed funds.

(B) If the loan is made from funds other than under paragraph (b)(1)(v)(A), the contribution is the present discounted cash value of the yield forgone, calculated based on a discount rate approved or prescribed by HUD. In determining the yield forgone, the recipient must use as a measure of a market rate yield on of the following, as appropriate:

(*1*) With respect to an individual unit financed with a fixed interest rate mortgage, a rate equal to the 10-year Treasury note rate plus 200 basis points;

(*2*) With respect to an individual unit financed with an adjustable interest rate mortgage, a rate equal to the one-year Treasury bill rate plus 250 basis points; or

(*3*) With respect to a multifamily project, a rate equal to the 10-year Treasury note rate plus 300 basis points.

(vi) A down payment by an eligible family may not count towards the match.

(vii) Non-Federal resources may include amounts, determined in accordance with paragraph (b)(1)(v)(B) of this section, that have been requested by the applicant in an application submitted to the Federal Housing Finance Board for assistance under its affordable housing program, so long as

that application is approved before the date HUD approves the HOPE application.

(2) *Administrative Costs.* (i) Paymant of eligible administrative costs approved by HUD from non-Federal resources. Contributions for administrative costs that exceed 7 percent of the grant (excluding any assistance for operating expenses) may not count towards the match. (This limitation is in addition to the limitation that the total amount that may be spent on administrative activities from the amount of the grant and any contributions towards the match may not exceed 15 percent of the grant amount (section 405(b)(4).) Non-Federal resources, for the purposes of counting contributions for administrative costs, may include funds from a Community Development Block Grant made to an entitlement grantee or a State under section 106(b) or section 106(d) of the 1974 Act and are subject to the recordkeeping and documentation requirements of that program.

(ii) For example, if the grant amount is $600,000 (excluding any grant amounts proposed for operating assistance), the receipient must assure the provision of at least $198,000 (33 percent of the grant) from non-Federal sources.

Contributions for administrative costs that may be counted towards the match may not exceed $42,000 (7 percent of the grant amount of $600,000). Although an applicant can spend more than this on administrative costs, it may not be counted towards the match. In addition, assuming contributions of $42,000 for administrative costs, the applicant must provide contributions covering the remaining $156,000 ($198,000 – $42,000) required for the match from non-Federal sources.

(3) *Taxes, Fees, and Other Charges.* The present value of taxes, fees, or other charges that are normally and customarily imposed but are waived, forgone, or deferred in a manner that facilitates the implementation of a homeownership program assisted under this notice. Only amounts for the period after the date a property is acquired by a recipient or other entity for transfer to eligible families (or the effective date of the implementation grant agreement if no acquisition is necessary) may be counted towards the match. For example, if a city agrees to forego real property taxes for 20 years, the application shall compute the estimated tax that would be otherwise payable over the 20 year period, and discount it to present value based on a discount rate approved or prescribed by HUD. Amounts that would be waived, foregone, or deferred for longer than 20 years from the date a family acquires homeownership interests in the unit may not be counted towards the match because enforcement would be impracticable. Where the match includes amounts under paragraph (b)(3) of this section, the documents transferring the homeownership interest to the family shall evidence the contribution, to the extent the contribution has not already been received.

(4) *Land or Other Real Property.* Real property, not acquired with Federal resources, contributed for use under an approved homeownership program. The as-is fair market value of land or other real property may be counted as a contribution towards the match, determined in accordance with a recent appraisal conducted under procedures established or approved by HUD. For eligible property, the fair market value shall be determined in accordance with section 405(b)(2)(ii).

(5) *Infrastructure.* The fair market value of investment, not made with Federal resources, in on-site and off-site infrastructure required for a homeownership program. The infrastructure investment may be counted towards the match only if it was completed no earlier than 12 months before the date of notification by HUD of implementation grant approval and no later than five years from the effective date of the grant agreement. Investment in infrastructure may include such activities as new or repaired utility laterals connecting eligible property to the main line and new or rebuilt walkways, sidewalks, or curbs on or contiguous to the eligible property. If the investment in infrastructure also benefits other properties, only the share of the costs directly benefiting the eligible property under the homeownership program may be counted towards the match.

(6) *Debt Forgiveness.* Where debt on real property to be acquired under the program is forgiven, permitting the property to be acquired for less than fair market value, the savings may count as a match. However, the forgiveness of the amount of any debt exceeding the fair market value of a property under the program, determined under § 405(b)(2)(ii) or paragraph (b)(4) of this section, may not be counted towards the match.

(7) *Other In-Kind Contributions.* (i) The reasonable value of in-kind contributions proposed by the applicant in the application and approved by HUD. In reviewing proposed in-kind contributions, HUD shall review to ensure (A) the proposed contribution is to be used for an eligible activity under the proposed homeownership program, (B) the application demonstrates that the proposed in-kind contribution will actually be provided; and (C) the proposed value of the contribution is reasonable. In determining whether the value is reasonable, HUD shall generally consider the amount such work would otherwise cost the program, but may adjust the value, based on special circumstances.

(ii) All donated labor, including sweat equity provided by a homebuyer or homeowner, shall be valued at $10 an hour, except for donated professional labor, as approved by HUD, including work by homebuyers and homeowners. The donated professional labor shall be valued at the fair market value of the work completed. Professional labor is work ordinarily performed by the donor for payment, such as work by laborers, electricians, and architects that is equivalent to work they do in their occupations. Sweat equity may be counted towards the match only if it is not also counted towards a family's equity.

(iii) Donated materials and supplies may be counted towards the match contribution. Materials and supplies need not have been purchased specifically for the program to be included as a match contribution, if the cost to the grantee of the materials and supplies (or, in the case of materials and supplies donated by a different entity than the recipient for use in the program, the fair market value of the materials and supplies) and if the fact that they were used in the program can be documented. The recipient shall maintain a written enumeration of what donated materials and supplies will be used in the program, as well as documentation of their cost or value.

(c) *Other Restrictions.* Contributions towards eligible activities that are not directly related to acquisition or rehabilitation of the property may be counted towards the match only to the extent the expenses are incurred before the date the family acquires the homeownership interest, except that contributions for counseling and training of homeowners may be counted if provided within one year of the transfer of ownership interest to the family. For example, contributions for child care services provided after the date of the transfer of ownership interests to the families may not be counted towards the match.

(d) *Exception for Indian Housing Authorities.* Where the recipient is an IHA and the IHA (acting in that capacity) has not received, and will not

receive, amounts under title I of the Housing and Community Development Act of 1974 for the fiscal year in which HUD obligates HOPE grant funds, the match requirements under this section shall not apply.

Section 415. Applications for implementation grants.

(a) *NOFA.* An application for an implementation grant shall be submitted by an applicant in accordance with this notice and the NOFA. The NOFA advises potential applicants how to obtain an application package and establishes deadlines and other requirements for submission of applications. An applicant may submit an application for either a planning grant or an implementation grant, but not both, for any one eligible property. The NOFA also informs each applicant that it may request information and guidance from HUD about program requirements and preparation of the application.

(b) *Application Contents.* Each application shall contain the information required by the application package, which shall include at least the following items.

(1) *Request for HOPE Implementation Grant.* The application shall contain (i) a summary description of the proposed homeownership program; (ii) a description of the personnel necessary to complete the activities; and (iii) the amount of the grant requested for each activity. The amount requested, together with any non-Federal contributions, shall be sufficient to carry out all proposed activities.

(2) *Section 8 Application.* (i) The application shall contain an application from a PHA/IHA whose jurisdiction includes the proposed eligible property for assistance under section 8 of the 1937 Act, specifying the period during which the assistance will be needed, or a statement by the applicant that no section 8 assistance will be needed.

(ii) The application shall specify whether the assistance is proposed for nonpurchasing residents for use in the eligible or another property, or both.

(3) *Qualifications and Experience of Applicant.* (i) The application shall describe the applicant and contain a statement of its qualifications and experience, including qualifications and experience in providing housing for low-income families. It is particularly important for an applicant that has not received and successfully carried out a planning grant to demonstrate its capacity to carry out the proposed homeownership program. HUD encourages two or more entities to submit an application together. For example, an application submitted by a newly established RC and an experienced nonprofit organization may greatly increase the likelihood of the success of the proposed homeownership program.

(ii) The application shall specify which entity will be the recipient and execute the grant agreement and include a certification that the entities have entered into a written agreement that delineates their respective roles.

(iii) An application from a private nonprofit organization that has applied for tax exempt status under section 501(c) of the Internal Revenue Code of 1986 on or before the date of application may be considered so long as the organization is approved before the effective date of the grant agreement.

(4) *Description of Proposed Homeownership Program.* The application shall describe the proposed homeownership program, demonstrating consistency with all requirements specified in this notice and the application package (see, especially, section 405, Eligible Implementation Grant Activities and Part V, Other Requirements). The application shall specify the activities to be carried out, their estimated costs, and a reasonable schedule for carrying out the activities. See section 715 for requirements for the timely transfer of ownership interests to eligible families. Where no resident entity has been established for the property, the application shall propose establishment of such an entity (such as an RMC, RC, or cooperative association) promptly after the effective date of the grant agreement.

(5) *Plan*—(i) *Identifying and Selecting Families.* The application shall contain a plan for identifying and selecting eligible families to participate in the homeownership program. The plan shall—

(A) Establish equitable procedures for selection of eligible families. Except for Indian tribes and IHAs as described in section 505(a)(2), the plan shall also describe activities planned to carry out the applicant's affirmative fair housing marketing responsibilities that apply whenever homeownership opportunities are made available to other than current residents of the property. The plan shall describe the applicant's affirmative fair housing marketing strategy, including specific steps to inform potential applicants and solicit applications from eligible families in the housing market area who are least likely to apply for the program without special outreach. The plan shall require any family determined not to have paid the appropriate amount of tenant contribution under a HUD housing assistance program to resolve any deficiency before being selected for homeownership.

(B) Give a first preference to otherwise qualified current residents and a second preference to otherwise qualified eligible families who have completed participation in an economic self-sufficiency program. The following self-sufficiency programs (and any other Federal, State, or local program proposed by the applicant and approved by HUD as equivalent) qualify: Project Self-Sufficiency, Operation Bootstrap, Family Self-Sufficiency and JOBS.

(C) Require the recipient to promptly notify in writing any rejected applicant family of the grounds for any rejection, or to require the recipient to require another appropriate entity to do so.

(D) Require each eligible family selected for homeownership to certify at the time it acquires an ownership interest in the unit (or enters into a lease or other conditional ownership agreement providing for acquisition of an ownership interest by the family) that it intends to occupy the unit as its principal residence.

(E) Require each eligible family to agree to occupy the property as its principal residence during the 15-year period from the date it acquires ownership interest in the unit (or enters into a lease or other conditional ownership agreement providing for acquisition of an ownership interest by the family), unless the recipient determines that family is required to move outside the market area due to a change in employment or an emergency situation or the family sells its ownership interest.

(F) Require any eligible family that violates the agreement made under paragraph (b)(5)(i)(E) of this section to pay the amount then due under the promissory note.

(G) Describe the composition of the residents and potential eligible families, including family size and income, and racial, ethnic, and gender characteristics, as required by HUD.

(ii) *Providing Relocation.* The application shall describe the proposed relocation activities, in accordance with the requirements of section 735. The plan shall specify the approximate number of families and individuals who are expected to choose to move and the number who will be temporarily relocated during rehabilitation, the estimated costs, the source of funding, the organization that will carry out the relocation if different than the applicant, and other available resources (including, for example, section 8 assistance).

(iii) *Managing Sweat Equity.* Where applicable, the application shall contain

a plan for managing the provision of sweat equity by homebuyers and homeowners, including a description of the anticipated scope of the work, schedule of completion, training of homebuyers and homeowners (and training of others donating labor in connection with sweat equity activity), supervision of the work by a licensed general contractor, and a contingency plan if the sweat equity is not fully provided or the schedule is not met.

(iv) *Providing Ongoing Training and Counseling.* The application shall contain a plan for providing ongoing training and counseling for homebuyers and homeowners.

(6) *Eligible Property.* (i) The application shall include a description of the eligible property, including the number of units by size (square footage), bedroom count, bathroom count, preliminary drawings and outline specifications for the proposed rehabilitation, unit plans, and a listing of amenities and services. The application shall also describe the neighborhood and include a map showing the location of the property and the racial and ethnic characteristics of the neighborhood.

(ii) The acquisition or rehabilitation of an eligible property shall involve acquisition and rehabilitation of all of the units in the property. HUD may permit acquisition or rehabilitation of less than the whole property if the applicant demonstrates to HUD's satisfaction that the acquisition or rehabilitation (or both) of less than all of the property is feasible and will not result in a hardship to the residents of the property who are not included in the homeownership program.

(iii) The application shall include evidence that the applicant has control of the property. Acceptable evidence includes a copy of the executed contract of sale, option agreement, or deed, or other proof of ownership. In the case of applications for property owned by a Federal, State, or local government, acceptable evidence includes a commitment to convey the property and a demonstration that any official action which is necessary to convey the property to the applicant has been taken, or will be taken, before the date estimated in the NOFA for notification of selection. Options or other commitments may be contingent upon award of funding under the program. Options or other commitments shall extend for at least a 12-month period from the deadline for submission of applications specified in the NOFA (to provide time necessary to review and select applications and execute grant agreements).

(7) *Housing Quality Standards Plan.* The application shall include a housing quality standards plan describing how the applicant will ensure that—

(i) The unit will be free from any defects that pose a danger to life, health, or safety before transfer of an ownership interest in a unit to an eligible family or execution of a lease with an option to purchase. The recipient shall inspect, or ensure inspection of, each unit to determine it does not pose an imminent threat to the life, health, or safety of current or future residents and that the property has passed recent fire and other applicable safety inspections conducted by appropriate local officials.

(ii) The unit will, not later than 2 years after the transfer to an eligible family, meet minimum housing standards. The recipient shall inspect, or ensure inspection of, each unit to determine it meets the standards applicable to projects refinanced pursuant to section 223(f) of the National Housing Act.

(8) *Economic Development.* The application may contain a plan for economic development activities under the program and shall contain such a plan if the applicant requests a homeownership program involving assistance for operating expenses. The application shall demonstrate that the proposed economic development activities under section 405(b)(13) are directly related to the proposed homeownership program, and describe how these activities will promote the self-sufficiency of homebuyers, residents, and homeowners.

(9) *Match Requirements.* (i) The application shall describe, and include commitments for, the resources that are expected to be contributed towards the match required under section 410, and of any other resources that are expected to be made available in support of the homeownership program. Acceptable evidence that the contribution will be provided shall be included. For example, if 20 years of tax abatement will be counted towards the match, the chief executive officer or appropriate legislative body of the government should submit a copy of the law or other official action documenting this commitment. Cash or other property contributions shall be supported by evidence of a binding commitment by the donor to donate the cash or other property, subject only to approval of the implementation grant and any other necessary conditions approved by HUD.

(ii) If the match requirement does not apply to an IHA in accordance with section 410(d), the application shall contain a certification that the IHA has not received, and will not receive, amounts under title I of the Housing and Community Development Act of 1974 for the fiscal year in which HUD obligates HOPE grant funds.

(10) *Nondisplacement; Participation by Residents.* The application shall contain a certification by the applicant that no person has been or will be displaced from his or her dwelling as a direct result of a homeownership program under this notice. This does not precluded termination of tenancy for violation of the terms of occupancy of a unit. Each resident of an eligible property shall be given an opportunity to become a homeowner under this program if the resident qualifies as an eligible family and meets other program requirements.

(11) *Financing.* (i) The application shall identify and describe the financing proposed for any (A) rehabilitation and (B) acquisition (*1*) of the property, where applicable, by the applicant or other entity, including an RC, for transfer to eligible families, and (*2*) by eligible families of ownership interests in units in the eligible property.

(ii) Financing may include use of the implementation grant to permit transfer of an ownership interest in a unit to an eligible family for less than fair market value or with assisted financing; sale for cash; or other sources of financing (subject to requirements that apply to such other sources), including conventional mortgage loans, mortgage loans insured under title II of the National Housing Act, and mortgage loans under other available programs, such as VA, FmHA, and RTC seller-assisted financing.

(iii) Financing may not involve use of the low income housing tax credit. Financing may not include assumption of a mortgage where low-income use restrictions would continue to apply.

(iv) If the applicant proposes that property transferred under this notice be pledged as collateral for debt or otherwise encumbered, the application shall contain sufficient information for HUD to determine that—

(A) The encumbrance will not threaten the long-term availability of the property for occupancy by low-income families, where the program provides for such long-term availability.

(B) Neither the Federal government nor the PHA/IHA will be exposed to undue risks related to action that may have to be taken pursuant to paragraph (b)(11)(vi) of this section (opportunity to cure).

(C) Any debt obligation can be serviced from project income, including operating assistance.

(D) The proceeds of the encumbrance will be used only to meet the housing quality standards (see paragraph (b)(7)) of this section or to make such additional capital improvements as HUD determines to be consistent with the purposes of the HOPE program.

(v) Recipients and homeowners continue to be subject to paragraphs (b)(11)(iv) (A)–(D) of this section during the term of the grant agreement.

(vi) The proposed financing shall require that any lender that provides financing in connection with the program shall give the PHA/IHA, RMC, individual owner, or other appropriate entity a reasonable opportunity to cure a financial default before foreclosing on the property, or taking other action as a result of the default (and the financing and conveyance documents shall include such restrictions).

(12) *Affordability*—(i) *Initial Affordability.* (A) The application shall demonstrate that the monthly expenditure for principal, interest, taxes, and insurance by an eligible family that is necessary to complete the sale for the initial acquisition of a unit does not exceed 30 percent of the adjusted income of the family, determined in accordance with 24 CFR part 813. As required by the statute, closing costs are included in this cap to the extent they are included in the costs of principal and interest, or are otherwise required to be paid by the homeowner over time after acquisition. It does not make sense to count closing costs paid as a lump sum at closing for purposes of computing a monthly maximum family expenditure. In setting the sales price for acquisition, the applicant shall take into account the need to comply with this affordability standard.

(B) The items subject to the limitations in paragraph (b)(12)(i)(A) of this section, plus estimated utility costs and other monthly housing costs (such as condominium and cooperative monthly fees) shall be at least 25 percent but not more than 35 percent of the adjusted income of the family, determined in accordance with 24 CFR part 813. The applicant may request HUD to approve a higher percentage cap, where the application demonstrates that a higher cap than 35 percent is necessary to make the project feasible and that the families will be able to afford the higher monthly cost.

(C) In the case of cooperative or condominium ownership, if the monthly charge to the homeowner includes amounts for principal, interest, taxes, insurance, or utilities, the portion of the charge covering these amounts shall be considered for purposes of making the affordability determinations under paragraph (b)(12) of this section.

(ii) *Continued Affordability.* The application shall contain a feasible plan for ensuring continued affordability by residents, homebuyers, and homeowners in the eligible property. The plan shall be based on a "proforma" prepared in accordance with paragraph (b)(12)(iii) of this section. The plan shall avoid using financing, such as a mortgage that is not fully amortizing (such as a "balloon" mortgage) or that involves negative amortization, that would impair the continued affordability of the property for eligible families.

(iii) *Proforma.* The plan shall include a "proforma" that sets forth estimated project costs and income over a 20-year period from the date the applicant or other entity acquires the property for transfer to eligible families (or from the effective date of the implementation grant agreement, where the applicant or other entity already owns the property). The proforma shall be prepared in accordance with the following requirements and guidelines.

(A) The proforma shall demonstrate that the requirements of paragraph (b)(12)(i) of this section are met and that, for the 20-year period, on an aggregate basis, eligible families shall not be required to pay more than the amounts provided in paragraph (b)(12)(i) (A) and (B) of this section.

(B) The proforma shall include an estimate of the income expected, by each unit size, for the 20-year period, including any homeownership payments, carrying charges, homeowner association payments, and HOPE grant funds for operating assistance (including funding of reserves) and for replacement reserves.

(C) The aggregate income estimated for the property shall equal or exceed the aggregate costs of operating and maintaining the property, including any debt service, property management costs, insurance costs, taxes, funding of operating or replacement reserves, and any other anticipated costs.

(D) Reasonable assumptions shall be used as to all material factors having an impact on the estimates contained in the proforma, including projected vacancy rates, collection rates, income of homebuyers, homeowners, and other residents; changes in such incomes; changes in utilities costs; and income earned on operating and replacement reserves. The applicant shall justify all assumptions used to prepare the proforma. The applicant shall estimate increases in income and operating costs in accordance with guidelines provided by HUD in the application package.

(E) The proposed use of an operating reserve funded from the HOPE grant shall comply with the requirements of section 405(b)(9).

(F) The proforma shall demonstrate that the aggregate income for the property (including amounts provided by HUD for operating assistance or replacement reserves) exceeds aggregate expenses and demonstrates a positive trend in the difference between income and expenses during the 20-year period.

(iv) *Replacement Reserves.* The application shall demonstrate that the amount proposed for replacement reserves is adequate, taking into account (A) the estimates covered by the proforma, (B) the size of the grant and the amount of matching contributions, (C) the condition and age of the property and each of its major systems and components (including at least the heating, plumbing and electrical systems and the roof, foundation, windows, exterior walls, and common areas (including need to repaint)), and (D) other possible replacement needs. The amount of the reserve shall be $1,000 per unit or such higher amount proposed by the applicant and approved by HUD.

(13) *Sales Price to Applicant or Other Entity.* The application shall specify the proposed sales price, the basis for the price determination, and terms of the proposed sale to the entity, if any, that will purchase the property for resale to eligible families.

(14) *Sales Prices and Terms of Sale to Eligible Families; Form of Ownership.* (i) The application shall include an estimate of the sales prices and terms of sale to eligible families. The application shall also specify the type or types of homeownership to be used, including cooperative ownership (including limited equity cooperative ownership), fee simple ownership (including condominium ownership), or another form of ownership proposed and justified by the applicant and approved by HUD. The application shall contain a certification that the proposed type of homeownership is consistent with any applicable State and local, or tribal, law. For example, if the applicant is a cooperative that proposes to own the property, it must have the legal ability to own the particular property.

(ii) The proposed program shall require each eligible family to make a down payment towards the cost of acquisition at closing.

(iii) An applicant may permit a family to meet its down payment obligation through "sweat equity."

(iv) See section 110(e) for provisions governing the use of single family FHA mortgage insurance.

(15) *Resale Restrictions, If Any.* The application shall contain any proposed restrictions on the resale of units by initial or subsequent homeowners under the homeownership program (see section 720(a)(1)(ii)). The required restrictions set forth in section 720 need not be restated.

(16) *Management Entity.* The application shall identify and describe the entity that will operate and manage the property, and contain a copy of the proposed contract.

(17) *CHAS Certification.* (i) The application shall contain a certification by the public official, or his or her authorized representative, who submits the CHAS that the proposed activities are consistent with the approved CHAS of the State or unit of general local government within which the eligible property is located.

(ii) Paragraph (b)(17)(i) of this section shall not apply to an application submitted by an Indian tribe or IHA. Indian tribes and IHAs are not included in the definition of a "jurisdiction," the entity charged with submitting a CHAS. HUD has concluded that Indian tribes and IHAs need not submit a CHAS and need not submit a certification of consistency with a housing strategy.

(18) *Equal Opportunity Certifications.* (i) The application shall contain—

(A) A certification that the applicant will comply with the requirements of the Fair Housing Act, title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973; and the Age Discrimination Act of 1975, and will affirmatively further fair housing; or

(B) In the case of an application from an Indian tribe or IHA, under the circumstances described in section 505(a)(2) of this notice, a certification that the applicant will comply with the Indian Civil Rights Act (25 U.S.C. 1301 *et seq.*), section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

(ii) The application shall contain a statement from the applicant (A) whether or not a desegregation order, agreement, or plan that applies to the applicant is in effect or known to the applicant to be under consideration; (B) that the applicant is not in violation of any existing desegregation order, compliance agreement, or voluntary agreement, or a statement describing the circumstances of the violation; and (C) describing any potential impact the proposed homeownership program may have on implementing any existing or pending order, agreement, or plan.

(19) *Resident Interest.* Where the applicant (or one of the applicants) is not an RMC or RC, the application shall contain a certification from the resident organization, if any, that it is interested in a homeownership program and that the applicant is submitting the application on behalf of the resident organization. Where there is more than one resident organization, the application shall so indicate and state the results of a vote by the residents, conducted by a disinterested third party, designating one resident organization for this purpose. In all cases, the application shall also contain a survey conducted by the applicant of resident interest in homeownership and marketability of the units, which shall be conducted in accordance with procedures set forth in the application package.

(20) *Plan for Use of Certain Program Income.* The application shall contain a plan for use of proceeds from sales to eligible families and amounts families may not retain upon resale. The plan shall provide for uncommitted program income to be spent before additional grant amounts are drawn down by the recipient.

(21) *Nonduplication of Funding.* The application shall contain a certification that the applicant has not and will not receive assistance from the Federal government, a State, or a unit of general local government, or any agency or instrumentality thereof, for activities for which funding is requested in the application.

(22) *Disclosures Required by the Reform Act.*

Section 102(b) of the HUD Reform Act, Public Law 101–235 (December 15, 1989) requires disclosure of other information concerning other government assistance to be made available with respect to the program and parties with a pecuniary interest in the homeownership program, and submission of a report on expected sources and uses of funds to be made available for the program. Each application shall include the information required by 24 CFR part 12, subpart C, the regulation that implements section 102 of the Reform Act. An implementing notice for 24 CFR part 12, subpart C, is being published in the **Federal Register.** Applicants shall use the form and guidance contained in that notice to make the required disclosures.

(c) *Screening by HUD.* (1) HUD shall screen each application submitted on or before the deadline for submission set forth in the NOFA to determine whether it is complete, is internally consistent, and contains correct computations. Where HUD determines an application is deficient in one or more of these areas, it shall notify the applicant in writing and give it an opportunity to correct the deficiencies in its application. However, the applicant may not substantially revise the application, such as by substituting another eligible property or applicant or changing other fundamental features of the homeownership program, because that would not be fair to other applicants. The notification shall require applicants to submit additional or correct material so it is received in the appropriate HUD office no later than close-of-business on the 14th calendar day after the date of the notification to the applicant giving it an opportunity to modify its application. HUD may not extend this deadline for actual receipt of the material for any reason. HUD shall not consider further any applications that do not meet one of the tests in the first sentence of paragraph (c)(1) of this section, after the opportunity, if any, to submit additional or corrected material.

(2) The purpose of this procedure is to increase the number of approvable applications so viable homeownership opportunities may be developed at the earliest possible time, while giving each applicant an equal opportunity to receive HUD assistance and correct deficiencies. HUD anticipates that many applicants will be relatively new and may need this additional opportunity to perfect their applications.

(Approved by the Office of Management and Budget under control number 2502–0451)

Section 420. Threshold review.

HUD shall review each application that qualifies for additional consideration under the screening procedures in Section 415(c). HUD shall not consider further any application that fails to meet one or more of the following additional threshold criteria—

(a) The application shall demonstrate that the affordability standards in Section 415(b)(12)(i) can be met and the plan for continued affordability in Section 415(b)(12)(ii) is feasible. HUD shall take into account the proposed cost of operating the property after eligible families become homeowners; the adequacy of counseling and training of homebuyers, residents, and homeowners; and the extent to which the proposed self-sufficiency activities assure continued affordability by homeowners.

(b)(1) The proposed program may not result in appreciably reducing in the locality the number of affordable multifamily rental housing units that would be available to residents currently residing in the property or to

families who would be eligible to reside in the property.

(2) HUD shall determine whether the application complies with this criterion, based on a determination that no more than 5 percent of the affordable multifamily rental housing units in the locality would be converted to homeownership. If the proposed eligible property is in a market area that contains such a small number of affordable rental housing units that the applicant believes the number of units in the eligible property may exceed the 5 percent threshold, the applicant shall submit whatever documentation it believes appropriate to assist HUD in making this determination.

(c) The applicant's certification of compliance with equal opportunity and related requirements and the statement concerning desegregation orders, compliance agreements, and voluntary agreements are consistent with facts known to HUD, and the performance of the applicant is satisfactory or any problems are being satisfactorily resolved.

(d) The application shall be submitted by an eligible applicant for eligible property.

(e) The proposed program provides that at least 66 percent of the units will be acquired by eligible families (or such higher percentage as may be required under State, local, or tribal law governing cooperative associations or other form of homeownership used under the program). In addition, the proposed program provides that at least 80 percent of units acquired for homeownership will be acquired by low-income families (or such higher percentage as may be required under such State, local, or tribal law), and that no units will be acquired by families with incomes above 95 percent of the area median.

(f) Where the vacancy rate for the eligible property is less than 50 percent, at least 50 percent of the residents are interested in becoming homeowners.

(g) The proposed costs of eligible activities are within applicable cost limitations.

(h) An assessment of the proposed eligible property, based on the criterion for rating the suitability of property, indicates that the property is suitable.

(i) The application meets all other program requirements.

Section 425. Rating, ranking, and selection of applications.

(a) *Rating.* HUD shall review each application that it determines to meet the threshold requirements and assign it points in accordance with the following selection criteria—

(1) *Capability.* The qualifications or potential capabilities of the applicant for developing a successful and affordable homeownership program. HUD shall assign points based on the past experience of the applicant, or an explanation of how such capability will be obtained, in the following categories—

(i) Developing or managing multifamily housing, or both—5 points.

(ii) Providing multifamily homeownership programs (for example, conversion of rental property to cooperative or condominium low-income homeownership, or developing financing programs for low-income homeownership)—5 points.

(iii) Organizing, developing, and training effective low-income neighborhood or low-income resident groups, or both—5 points.

Maximum points for this criterion (1): 15 points.

(2) *Quality of the Program.* In assigning points for this criterion, HUD shall consider evidence in the application demonstrating—

(i) The overall soundness and comprehensiveness of the homeownership program—15 points.

(ii) The extent to which proposed economic development activities will result in continued affordability of the property after assistance for operating expenses is no longer available—10 points.

If no assistance for operating assistance is being requested and if the application demonstrates that no economic development assistance is needed, no points shall be assigned under subcriterion (ii), and the points for subcriterion (i) shall be 25.

Maximum points for this criterion (2): 25 points

(3) *Local Support.* The extent of cooperation or support, or both, from the unit of general local government, neighborhood organizations, and providers of services and resources appropriate to assist eligible families to achieve economic independence. In assigning points for this criterion, HUD shall consider—

(i) Evidence of support for the homeownership program, demonstrated through letters, resolutions, or other expressions of support from State or local governments, PHAs/IHAs, and community, civic, religious, or other entities—5 points; and

(ii) Evidence from entities other than the applicant that funds, services, or other resources will be made available in support of the homeownership program, demonstrated through letters, resolutions, or other expressions of support from providers of services and other resources.—5 points.

The highest number of points shall be assigned based on the quality, expected duration, and size of support to the homeownership program.

Maximum points for this criterion (3): 10 points.

(4) *Resident and Homebuyer Interest.* The extent of resident and homebuyer interest in the development of a homeownership program for the eligible property. HUD shall assign points based on the percentage of current and potential residents interested in participating in the proposed homeownership program, based on a survey conducted by the applicant and submitted to HUD as part of the application. Only occupied units in the property shall be used to calculate the percentage of residents interested.

(i)(A) If 75 percent or more of the residents are interested: 5 points; or

(B) If 50–74.99 percent of the residents are interested: 3 points; and

(ii)(A) If 75 percent or more of the units occupied by nonpurchasers are occupied by residents willing to move and the application demonstrates that all the units in the property are marketable: 5 points;

(B) If 50–74.99 percent of the units occupied by nonpurchasers are occupied by residents willing to move and the application demonstrates that all the units in the property are marketable: 3 points; or

(C) If less than 50 percent of the units occupied by nonpurchasers are occupied by residents willing to move: 0 points.

If the vacancy rate for the property is 50 percent or more, the points for categories (ii) (A) and (B) shall be doubled and no points shall be assigned for categories (i) (A) and (B).

Maximum points for this criterion (4): 10 points

(5) *Suitability of the Property.* The suitability of the eligible property for homeownership shall be determined based on—

(i) Proximity or accessibility of the property to places of employment, shopping, schools, medical facilities, transportation, places of worship, recreational facilities, and other necessary services for the families under the program—4 points;

(ii) Whether the surrounding neighborhood is free from conditions which are seriously detrimental to the quality of life; substandard dwellings or other undesirable elements must not predominate, unless the undesirable conditions affecting the property are being actively mitigated—12 points; and

(iii) Whether the structure type and bedroom configuration are (or will be after any proposed rehabilitation) appropriate for the proposed homeownership program—4 points.

The purpose of this criterion is to assure that property in neighborhoods completely unsuitable for homeownership are not selected. The review will be made in the context of where the eligible properties are typically located.

Maximum points for this criterion (5): 20 points.

(6) *MBE/WBE Goals.* (i) The extent to which the applicant demonstrates a firm commitment to promoting the use of minority business enterprises and women-owned businesses, especially resident-owned businesses. For example, the applicant has used such businesses in the past, has set forth specific affirmative steps it will take to ensure that such businesses have an equal opportunity to obtain and compete for contracts, or both. These steps may include the steps outlined at 24 CFR 85.36(e) and 570.506(g)(6), but may not include awarding contracts solely or in part on the basis of race or gender. See Section 505(d) for the legal basis for this criterion.

(ii) In the case of applications submitted by Indian tribes or IHAs, the requirements of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450e(b), apply. Accordingly, for such applicants, points for this factor shall be assigned based on the extent to which the applicant demonstrates a firm commitment to promoting the use of minority business enterprises and women-owned businesses, to the maximum extent consistent with, but not in derogation of, the Indian Self-Determination and Education Assistance Act.

Maximum points for this criterion (6) (i) or (ii), as applicable: 5 points.

(7) *Feasibility and Efficiency*—(i) *Feasibility.* The extent of readiness of the applicant to proceed with rehabilitation and the homeownership program, based on the level of completeness of the architectural exhibits and the cost estimates of the proposed rehabilitation. Applicants submitting final working drawings and specifications that are sufficient to permit the applicant to obtain bids for the work will receive maximum points.

Maximum points for this subcriterion: 10 points.

(ii) *Efficiency.* The efficiency of the applicant's use of HOPE grant funds, based on such factors as—

(A) The amount of the HOPE grant per unit, adjusted for high-cost areas;

(B) The availability of contributions beyond those required by the match, and the availability of the contributions proposed in cash and for relatively firmer commitments of cash and other contributions.

Maximum points for this subcriterion (ii): 5 points.

Maximum points for this criterion (7): 15 points.

(8) *Extent of Low-Income Homeownership.* HUD shall deduct points for an application that proposes relatively fewer low-income purchasers, as follows:—

(i) An application shall have 15 points deducted from its score if 80.01–90 percent of the units will be purchased by low-income families.

(ii) An application shall have 10 points deducted from its score if 90.01–99.99 percent of the units will be purchased by low-income families.

(iii) An application shall have no points deducted from its score if 100 percent of the units will be purchased by low-income families.

Total points—100 points.

(b) *Environmental Review.* (1) HUD shall conduct an environmental review of the implementation grant applications.

(2) In conducting the environmental review, HUD shall assess the environmental effects of each implementation grant application in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) and HUD's implementing regulations at 24 CFR part 50. Any application that requires an environmental impact statement (generally, those that HUD determines would have a significant impact on the human environment, in accordance with the environmental assessment procedures at 24 CFR part 50, subpart F) shall not be eligible for funding.

(3) As a result of the environmental review, HUD may find that it cannot approve an application unless adequate measures to mitigate environmental impacts are taken. (See, for example, 24 CFR part 51.) Accordingly, HUD may adjust the rating scores of such applications, based on the anticipated time delays or excessive costs in adopting appropriate impact mitigation. For example, the feasibility of the program or the availability of an eligible property may be harmed by any significant delay.

(4) The environmental review often will reveal information not contained in the application that may have relevance to the selection process. HUD shall make further adjustments to the ratings, where appropriate, based on the information revealed during the environmental review.

(c) *Ranking and Selection to Assure National Geographic Diversity.* (1) After assigning points to each application under paragraph (a) of this section, HUD shall rank the implementation grant applications rated under paragraph (a) of this section. HUD shall examine the ranking and, where it determines that applications falling below a certain point total are not suitable or not feasible for homeownership under the program, it may establish a minimum number of points for an application to be selected. HUD shall then select the highest ranking application from each of the 10 HUD Regions.

(2) HUD shall then select the highest ranking remaining applications, without regard to their location.

(3) If two or more applications have the same number of points, the application with the most points for feasibility and efficiency shall be selected. If there is still a tie, the application with the most points for suitability of property shall be selected.

(4) When the amount remaining after funding as many of the highest ranking applications as possible is insufficient for the next highest ranking application, HUD may determine whether funding a lower grant amount is feasible. Alternatively, HUD may skip to the next highest ranking application or applications that can be funded with the remaining amount.

(5) Procedural errors discovered after initial ratings but before notification of applicants shall be corrected and rankings revised. Procedural errors discovered after notification of approved applicants which, if corrected, would result in approval of an application which was not approved will be corrected by funding the application from any unused amounts or "off the top" from amounts available for implementation grants in the next funding round.

(d) *Reduction in Requested Grant Amounts.* HUD shall approve an implementation grant application for an amount lower than the amount requested or adjust line items in the proposed budget within the amount requested (or both) if it determines the amount requested for one or more eligible activities is unreasonable or unnecessary or does not otherwise meet applicable cost limitations established for the program.

(e) *Notification of Approval or Disapproval*—(1) *Notification of Applicants.* After completion of the ranking and selection of applications, but no later than six months after the

date of submission of the application, HUD shall notify the selected applicants and the applicants that have not been selected, in writing. The amount of the required match may be adjusted when HUD approves an application, to reflect the approved grant amount.

(2) *Conditional Approval of Section 8 Applications.* HUD may approve the HOPE implementation grant application with a statement that the application for the section 8 certificate or housing voucher assistance (or both) is conditionally approved, subject to the availability of appropriations in subsequent fiscal years. This will permit HUD to use section 8 authority for other purposes until it is needed for the HOPE 2 program for nonpurchasing residents.

(f) *Use of Remaining Amounts to Fund HOPE 2 Planning Grants.* Any amounts available to fund implementation grants that are not needed because there are insufficient approvable applications shall be used to fund the highest ranked, unfunded planning grant applications.

(g) *Insufficient Approvable Applications.* If funds remain after HUD approves all approvable applications, including planning grant applications, as provided in this notice, HUD may publish a NOFA inviting applications for planning or implementation grants, or both, in accordance with this notice, or invite applicants who submitted applications that could not be funded to submit amended planning grant or implementation grant applications in accordance with this notice within a deadline specified in the invitation.

V. Other Requirements

Section 501. Flood insurance and Coastal Barriers Resources Act.

(a) *Flood Insurance.* Pursuant to the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128) HUD will not approve applications for implementation grants providing financial assistance for acquisition or rehabilitation of properties located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless—

(1) The community in which the area is situated is participating in the National Flood Insurance program (see 44 CFR parts 59 through 79), or less than one year has passed since FEMA notification regarding such hazards; and

(2) Flood insurance is obtained as a condition of approval of the application.

(b) *Coastal Barriers Resources Act.* Pursuant to the Coastal Barriers Resources Act (16 U.S.C. 3601), HUD will not approve applications for planning or implementation grants for properties in the Coastal Barriers Resources System.

Section 505. Nondiscrimination and equal opportunity.

(a) *Fair Housing Requirements.* (1) The requirements of the Fair Housing Act (42 U.S.C. 3601–19) and implementing regulations at 24 CFR part 100, part 109, and part 110; Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1958–1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1 shall apply.

(2) The Indian Civil Rights Act (25 U.S.C. 1301 *et seq.*) applies to tribes when they exercise their powers of self-government. Thus, it is applicable in all cases when an IHA has been established by exercise of such powers. In the case of an IHA established pursuant to State law, the applicability of the Indian Civil Rights Act shall be determined on a case-by-case basis. Developments subject to the Indian Civil Rights Act shall be developed and operated in compliance with its provisions and all implementing HUD requirements, instead of title VI and the Fair Housing Act and their implementing regulations.

(b) *Discrimination on the Basis of Age or Handicap.* The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8 shall apply.

(c) *Employment Opportunities.* (1) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects) shall apply. In addition, Executive Order 11246 (3 CFR 1964–1965 Comp., p. 339) (Equal Employment Opportunity) and implementing regulations at 41 CFR part 60 shall apply

(2) In the case of Indian tribes in IHAs, the requirements of the Indian Self-Determination and Education Assistance Act shall also apply (see 25 U.S.C. 450e(b); 24 CFR 905.165 (a) and (b) and 905.360); compliance with Executive Order 11246 and 41 CFR part 60 shall be to the maximum extent consistent with, but not in derogation of, the Indian Self-Determination and Education Assistance Act (see 24 CFR 905.170(b) and 905.360).

(d) *Minority and Women's Business Enterprises.* The requirements of Executive Orders 11625, 12432, and 12138 shall apply. Consistent with HUD's responsibilities under these Orders, recipients must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities. In the case of applications submitted by Indian tribes or IHAs, recipients' efforts must be consistent with, but not in derogation of, the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450e(b).

(e) *Affirmative Fair Housing Marketing.* The recipient shall adopt a plan for informing and soliciting applications from people who are least likely to apply for the program without special outreach, consistent with the affirmative fair housing marketing requirements. See 24 CFR part 108. Paragraph (e) of this section shall not apply to Indian tribes and IHAs, as described in paragraph (a)(2) of this section.

(f) *Authority for Collection of Racial, Ethnic and Gender Data.* HUD requires submission of racial, ethnic, and gender data under this notice pursuant to section 562 of the Housing and Community Development Act of 1987, section 431 of NAHA, and section 808(e)(6) of the Fair Housing Act.

Section 510. OMB circulars.

(a) The policies, guidelines, and requirements of OMB Circular Nos. A–87 (Cost Principles Applicable to Grants, Contracts and Other Agreements with State and Local Governments) and 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments) apply to the award, acceptance, and use of assistance under the program by governmental entities, and to the remedies for non-compliance, except where inconsistent with the provisions of NAHA, other Federal statutes, or this notice. Circular Nos A–110 (Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations) and A–122 (Cost Principles Applicable to Grants, Contracts and Other Agreements with Nonprofit Institutions) apply to the acceptance and use of assistance by private nonprofit organizations, except where inconsistent with the provisions of NAHA, other Federal statutes, or this notice. Recipients are also subject to the

audit requirements of OMB Circular A–128 implemented at 24 CFR part 44, and OMB Circular A–133 (Audits of Institutions of Higher Learning and Other Nonprofit Institutions).

(b) Copies of OMB Circulars may be obtained from E.O.P. Publications, room 2200, New Executive Office Building, Washington, DC 20503, telephone (202) 395–7332 (this is not a toll-free number). There is a limit of two free copies.

Section 515. Drug-free workplace.

Applicants shall certify that they will provide a drug-free workplace, in accordance with the Drug-free Workplace Act of 1988 and HUD's implementing regulations at 24 CFR part 24, subpart F.

Section 520. Anti-lobbying certification.

(a) Section 319 of Public Law 101–121 prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government. A government-wide common rule governing the restrictions on lobbying was published as an interim rule on February 26, 1990 (55 FR 6736) and supplemented by a notice published June 15, 1990 (55 FR 24540). For HUD, this rule is found at 24 CFR part 87. The rule requires applicants for and recipients of assistance exceeding $100,000 to certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance. The rule also requires disclosures from applicants and recipients if nonappropriated funds have been spent or committed for lobbying activities if those activities would be prohibited if paid with appropriated funds. The law provides substantial monetary penalties for failure to file the required certification or disclosure.

(b) This section shall not apply to Indian tribes or IHAs. Indian tribes, tribal organizations, or any other Indian organization with respect to expenditures specifically permitted by other Federal law are not covered by the definition of "person" in 24 CFR part 87.

Section 525. Debarred or suspended contractors.

The provisions of 24 CFR part 24 apply to the employment, engagement of services, awarding of contracts, subgrants, or funding of any recipients, or contractors or subcontractors, during any period of debarment, suspension, or placement in ineligibility status.

Section 530. Conflict of interest.

(a) In addition to the conflict of interest requirements in OMB Circular A–110 [2] and 24 CFR part 85, no person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient and who exercises or has exercised any functions or responsibilities with respect to assisted activities, or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter, except that a resident of an eligible property may acquire a homeownership interest.

(b) HUD may grant an exception to the exclusion in paragraph (a) of this section on a case-by-case basis when it determines that such an exception will serve to further the purposes of the HOPE program and the effective and efficient administration of the local homeownership program. An exception may be considered only after the applicant or recipient has provided a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made and an opinion of the applicant's or recipient's attorney that the interest for which the exception is sought would not violate State or local laws. In determining whether to grant a requested exception, HUD shall consider the cumulative effect of the following factors, where applicable:

(1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the local homeownership program that would otherwise not be available;

(2) Whether an opportunity was provided for open competitive bidding or negotiation;

(3) Whether the person affected is a member of a group or class intended to be the beneficiaries of the activity and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(4) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decisionmaking process, with respect to the specific activity in question;

(5) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (b) of this section;

(6) Whether undue hardship will result either to the applicant, recipient, or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(7) Any other relevant considerations.

Section 535. Labor standards.

If other Federal programs are used in connection with the HOPE 2 homeownership program, labor standards requirements apply to the extent required by such other Federal programs. For example, If CDBG assistance is used for the HOPE program, any labor standards requirements of that program would apply to the extent required by it.

Section 540. Lead-based paint testing and abatement.

Any residential property assisted under the HOPE program established under this notice constitutes HUD-associated housing for the purpose of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, *et seq.*) and is, therefore, subject to 24 CFR part 35. Unless otherwise provided, recipients shall be responsible for testing and abatement activities.

Section 545. Requirements applicable to religious organizations.

Where the applicant is, or proposes to contract with, a primarily religious organization, or a wholly secular organization established by a primarily religious organization, to provide, manage, or operate housing under the program, the organization shall undertake its responsibilities under the homeownership program in accordance with the following principles:

(a) It will not discriminate against any employee or applicant for employment under the program on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;

(b) It will not discriminate against any person applying for housing on the basis of religion and will not limit such housing or give preference to persons on the basis of religion;

(c) It will provide no religious instruction or counseling, conduct no religious services or worship (which term does not include voluntary, non-denominational prayer before meetings), engage in no religious proselytizing, and exert no other religious influence in the provision of assistance under the homeownership program.

[2] See section 510(b) concerning the availability of OMB Circulars.

VI. Grant Agreement—Planning and Implementation Grants

Section 601. Grant agreement.

After HUD approves an application for a planning grant or an implementation grant, it shall enter into a grant agreement with the recipient setting forth the amount of the grant and applicable terms and conditions, including sanctions for violation of the agreement. Among other things, the grant agreement shall provide that the recipient agrees:

(a) To carry out the program in accordance with the provisions of this notice, applicable law, the approved application, and all other applicable requirements;

(b) To comply with such other terms and conditions, including recordkeeping and reports, as HUD may establish for the purposes of administering, monitoring, and evaluating the program in an effective and efficient manner;

(c) That HUD may withhold, withdraw, or recapture any portion of a grant, terminate the grant agreement, or take other appropriate action authorized under the grant agreement, if HUD determines that the recipient is failing to carry out the approved homeownership program in accordance with the terms of the approved application and this notice, including failure to provide the contributions towards the match.

VII. Implementation of Planning and Implementation Grants

Section 701. Implementation; Family contribution: Performance standards.

(a) After execution of its planning or implementation grant agreement, the recipient shall carry out the planning grant or implementation grant activities in accordance with its approved application. HUD shall establish procedures governing the drawdown of funds under grant agreements.

(b) The total monthly amount payable by a family may not be less than the amount determined in accordance with the regulations specified in section 415(b)(12)(i) if operating assistance under the program is being provided for the family. The amount payable by a family shall be adjusted at least annually in accordance with the requirements of those regulations so long as operating assistance is being provided under the program for the family.

(c) HUD intends to establish performance criteria in the final rule for the program and invites comments on what the standards should be.

Section 705. Resident selection procedures during rental phase (If Any).

During the interim period, if any, when the property continues to be operated and managed as rental housing, the recipient shall utilize written resident selection policies and criteria that are approved by HUD as consistent with the purpose of improving housing opportunities for low-income families. The policies shall provide that the recipient (or another appropriate entity) (a) notify any rejected applicant in writing of the grounds for rejection; (b) comply with applicable affirmative fair housing marketing requirements; (c) specify the basis for resident selection, which shall give a preference to applicants interested in becoming homeowners who have completed participation in an economic self-sufficiency program (see section 415(b)(5)(i)(B)) and other applicants interested in becoming homeowners and shall provide for a waiting list; and (d) verify family income of applicants and check the credit and rental history of applicants. The resident selection policies and criteria may not provide for the recipient (or other entity) to take into account whether an applicant receives public assistance or receives Federal, State, or local housing assistance, but may take into account such assistance, and all other income and other resources, in determining the amount a family will pay under the program. The recipient may adopt the assisted housing occupancy handbook, with any appropriate modifications (including, at least, establishing a priority for applicants interested in homeownership).

Section 710. Social security numbers.

As a condition of eligibility for homeownership under this notice—

(a) At the time a family applies for homeownership, the recipient (or other appropriate entity) shall require the family to meet the requirements for the disclosure and verification of social security numbers, as provided by 24 CFR part 750; and

(b) The recipient (or other appropriate entity) shall require the family to sign and submit consent forms for the obtaining of wage and claims information from State Wage Information Collection Agencies, as provided by 24 CFR part 760.

Section 715. Timely homeownership.

(a) *Deadline for Transfer.* Recipients shall transfer ownership interests in the property to eligible families within a reasonable period of time.

(b) *Definition of Reasonable Period of Time.* (1) Except for eligible property already owned by the entity that will transfer to eligible families, the eligible property shall be acquired within one year of the effective date of the implementation grant agreement. Ownership interests in the units shall be transferred to eligible families within four years of the effective date.

(2) An applicant may propose in its application a longer period for transferring ownership interests to eligible families, and submit a justification. After application approval, HUD may approve a request for a longer deadline for transfer to eligible families, where it determines that unanticipated, extraordinary circumstances exist. Subject to the availability of funding, HUD may consider making additional section 8 assistance available to residents in the property where necessary to maintain its feasibility during the time the causes for the delay are being corrected. This could become necessary if residents who intended to purchase change their minds and need assistance to afford the rents in the property.

Section 720. Restrictions on resale by initial homeowners.

(a) *In general*—(1) *Tranfer Permitted.* (i) A homeowner may transfer the homeowner's ownership interest in the unit, subject only to the right to purchase under paragraph (a)(2) of this section, the requirement for the purchaser to execute a promissory note, if required under paragraph (b) of this section, and the limitation on the amount of sales proceeds a family may retain upon sale within the first six years, as required under paragraph (c) of this section. See paragraphs (b) and (c) of this section for the rules for determining the amount homeowners may retain from the sales proceeds.

(ii) Notwithstanding paragraph (a)(1)(i) of this section, an applicant may propose in its application, and HUD may approve based on a review of the individual circumstances, additional reasonable restrictions on the resale of units under the program.

(2) *Right to purchase.* (i) Where an RMC, RC, or cooperative has jurisdiction over the unit, it shall have the prior right to purchase the ownership interest in the unit from the initial homeowner for the amount specified in a firm contract between the homeowner and a prospective buyer. The RMC, RC, or cooperative association shall have 10 days after receiving notice of the firm contract to decide whether to exercise

its right and 60 additional days to complete closing of the purchase.

(ii) If no RMC, RC, or cooperative has jurisdiction over the unit or no such entity elects to purchase from the initial homeowner and if the prospective buyer is not a low-income family, a PHA/IHA with jurisdiction for the area in which the unit is located or the recipient, as specified in writing at the time the family acquires ownership interest in the unit, shall have the prior right to purchase the ownership interest in the unit for the amount specified in the firm contract. The PHA/IHA, or recipient shall have 10 days after receiving notice of the firm contract to decide whether to exercise its right and 60 additional days to complete closing of the purchase.

(iii) Where an RMC, RC, cooperative, PHA/IHA, or recipient exercises a right to purchase, it shall resell the unit to an eligible family promptly. If the PHA/IHA exercises a right to purchase shares representing a unit in a cooperative, because the cooperative did not have sufficient money to do so, the PHA/IHA shall give the cooperative another chance to purchase the shares before selling it to an eligible family.

(b) *Promissory Note.* (1)(i) At closing the initial homeowner shall execute a nonamortizing, nonrecourse, non-interest-bearing promissory note, in a form acceptable to HUD, equal to the difference, if any, between the fair market value of the unit and the purchase price, payable to the PHA/IHA, recipient, or other entity designated in the approved homeownership plan, together with a mortgage securing the obligation of the note. In determining the amount of the promissory note and for that purpose only, the purchase price shall be adjusted by deducting all substantial amounts of assistance that would result in an undue profit to the family if it were to sell the property at the beginning of the 7th year of homeownership. (See paragraph (c) of this section for restrictions during the first six years.) For example, if the family received down payment assistance equal to 10 percent or more of the fair market value, a promissory note shall be required.

(ii)(A) With respect to a sale by an initial homeowner, the note shall require payment upon sale by the initial homeowner, to the extent proceeds of the sale remain after paying off other outstanding debt secured by the property that was incurred for the purpose of acquisition or property improvement, paying any other amounts due in connection with the sale (such as closing costs and transfer taxes), and paying the family the amount of its equity in the property, computed in accordance with paragraph (c) of this section.

(B) With respect to a sale by an initial homeowner after the first six years after acquisition through the 20th year the amount payable under the note shall be reduced by $\frac{1}{168}$ of the original principal amount of the note for each full month of ownership by the family after the end of the sixth year The homeowner may retain all other proceeds of the sale.

(C) For example, if the family sells at the end of the 13th year of homeownership (at the half-way point between the end of the sixth year and the end of the 20th year of ownership), $\frac{84}{168}$ (or one-half) of the note would be forgiven, and only half of the principal amount of the note would be payable from sales proceeds. The family could retain all remaining proceeds, including proceeds due to normal market value increases in the value of the property. If the initial homeowner retains ownership for 20 or more years, the entire amount of the note would be forgiven.

(2)(i) Where a subsequent purchaser during the 20-year period, measured by the term of the initial promissory note, purchases the property for less than the then current fair market value, the purchaser shall also execute at closing such a promissory note and mortgage, for the amount of the discount (but no more than the amount payable at the time of the sale on the promissory note by the seller). The term of the promissory note shall be the period remaining of the original 20-year period. The note shall require payment upon sale by the subsequent homeowner, to the extent proceeds of the sale remain after covering costs of the sale, paying off other outstanding debt secured by the property that was incurred for the purpose of acquisition or property improvement, and paying any other amounts due in connection with the sale. The amount payable on the note shall be reduced by a percentage of the original principal amount of the note for each full month of ownership by the subsequent homeowner. The percentage shall be computed by determining the percentage of the term of the promissory note the homeowner has owned the property. The remainder may be retained by the subsequent homeowner selling the property.

(ii) For example, if the subsequent homeowner acquires the property from an initial homeowner at the end of year 4, there are 192 months (16 years × 12) remaining in the 20-year period. The term of the promissory note is 16 years. If the subsequent homeowner sells at the end of year 10, having owned the property for 72 months (6 years × 12), $\frac{72}{192}$ (37.5 percent) of the note would be forgiven, and 62.5 percent of the principal amount of the note would be payable from sales proceeds. The family could retain all remaining proceeds, including proceeds due to normal market value increases in the value of the property. If the subsequent homeowner retains ownership to the end of the initial 20-year period (for 16 years, in the example), the entire amount of the note would be forgiven.

(c) *Limitation on Equity Interest an Initial Homeowner May Retain from Sale During First Six years.* (1) The HOPE program is designed to assure that an initial or subsequent homeowner does not receive any undue profit from acquiring a unit under the program and that, to the extent the sales price is sufficient, an initial homeowner recovers the equity interest in the property. With respect to any sale by an initial homeowner during the first six years after acquisition, the family may retain only the amount computed under paragraph (c) of this section. Any excess shall be distributed as provided in paragraph (d) of this section. The amount of equity an initial homeowner has in the property is determined by computing the sum of the following—

(i) The contribution to equity paid by the family (such as any down payment (in the form of cash or the value of sweat equity) and any amount paid towards principal on a mortgage loan during the period of ownership);

(ii) The value of any improvements installed at the expense of the family during the family's tenure as owner (including improvements made through sweat equity), as determined by the recipient or other entity specified in the approved application based on evidence of amounts spent on the improvements, including the cost of material and labor; and

(iii) The appreciated value, determined by applying the Consumer Price Index (Urban Consumers) against the contribution to equity under paragraphs (c)(l)(i) and (ii) of this section.

(2) The recipient (or other entity) may, at the time of initial sale, enter into an agreement with the family to set a maximum amount which this appreciation may not exceed.

(3) Amounts that count towards a family's equity may not also count towards the match.

(d) *Use of Amounts a Family May Not Retain.* Fifty percent of any portion of the net sales proceeds that may not be retained by the homeowner under paragraphs (a)(1)(ii), (b), and (c) of this section shall be paid to the entity that transferred ownership interests in units

to eligible families, or another entity specified in the approved application, for use for improvements to the project, business opportunities for low-income families, supportive services related to the homeownership program, additional homeownership opportunities (including assistance for additional homeowners who are otherwise unable to cover the costs of homeownership), and other activities approved by HUD in the approved homeownership program or later. The remaining 50 percent shall be collected by the recipient and returned to HUD within 15 days of the sale for use under the HOPE 2 program, subject to any limitations contained in appropriations Acts.

Section 725. Use of proceeds from sales to eligible families.

The entity that transfers ownership interests in units to eligible families, or another entity specified in the approved application, shall use the proceeds, if any, from the initial sale for costs of the homeownership program, including operating expenses, improvements to the project, business opportunities for low-income families, supportive services related to the homeownership program, additional homeownership opportunities, and other activities approved by HUD, either as part of the approved application or later on request.

Section 730. Third party rights.

The requirements under this notice regarding housing quality standards, resale, or transfer of the ownership interest of a homeowner shall be judicially enforceable against the recipient with respect to actions involving rehabilitation, and against purchasers of eligible property under the HOPE program or their successors in interest (to the extent such requirements apply to purchasers and their successors in interest) with respect to other actions by affected low-income families, RMCs, RCs, PHAs/IHAs, and any agency, corporation, or authority of the United States government. The parties specified in the preceding sentence shall be entitled to reasonable attorney fees upon prevailing in any such judicial action.

Section 735. Displacement prohibited; Protection of nonpurchasing residents.

(a) *Displacement Prohibited.* No person may be displaced from his or her dwelling as a direct result of a homeownership program under this notice. This does not preclude terminations of tenancy for violation of the terms of occupancy of the unit. In addition to any applicable sanctions under the grant agreement, a violation of paragraph (a) of this section may trigger a requirement to provide relocation assistance in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and government-wide implementing regulations at 49 CFR part 24.

(b) *Temporary Relocation.* The recipient shall provide each resident of an eligible property, who is required to relocate temporarily to permit work to be carried out, with suitable, decent, safe, and sanitary housing for the temporary period and shall reimburse the resident for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the costs of moving to and from the temporarily occupied housing and any increase in monthly costs of rent and utilities.

(c) *Relocation Assistance for Residents Who Elect to Move.* The recipient shall provide each nonpurchasing resident who elects to move with relocation assistance in accordance with the approved homeownership program.

(1) The program shall provide, at least, the following assistance:

(i) Advisory services including timely information, counseling (including the provision of information on a resident's rights under the Fair Housing Act), and referrals to suitable, affordable, decent, safe, and sanitary alternative housing;

(ii) Payment for actual, reasonable moving expenses; and

(iii) Relocation housing assistance sufficient to permit relocation to suitable, affordable, decent, safe, and sanitary housing. This requirement is met if a family receives assistance as provided in paragraph (c)(2) of this section. For other families, this requirement is met if the cost of the housing to the family does not exceed the higher of 30 percent of adjusted family income or the amount paid by the family for the unit being vacated, and the housing is otherwise suitable and decent, safe, and sanitary.

(2) If a resident living in an eligible property on the date HUD approves an application for an implementation grant is a low-income resident and decides not to purchase a unit, or is not qualified to do so under the terms of the approved homeownership program, HUD shall, subject to the availability of appropriations, ensure that the resident receives a section 8 certificate or voucher for use in that or another property.

(d) *Notice of Relocation Assistance.* As soon as feasible, each recipient shall give each resident of an eligible property a written description of the applicable provisions of this section.

VIII. Records, Reports, and Audit of Recipients

Section 801. Recordkeeping.

(a) *General Records.* Each recipient shall keep records that will facilitate an effective audit to determine compliance with program requirements and that fully disclose—

(1) The amount and disposition by the recipient of the planning and implementation grants received under this notice, including sufficient records that document the reasonableness and necessity of each expenditure;

(2) The amount and disposition of proceeds from financing obtained in connection with the program, sales to eligible families, and any funds recaptured upon sale by the homeowner;

(3) The total cost of the homeownership program;

(4) The amount and nature of any other assistance, including cash, property, services, or other items contributed as a condition of receiving an implementation grant;

(5) The cost or other value of all in-kind contributions towards the match required by section 410; and

(6) Any other proceeds received for, or otherwise used in connection with, the homeownership program.

(b) *Family Size and Income and Racial, Ethnic, and Gender Data.* The recipient shall maintain records on the family size and income, and racial, ethnic, and gender characteristics, of families who apply for homeownership and families who become homeowners.

(c) *Cooperative and Condominium Agreements.* The recipient shall maintain a copy of any condominium and cooperative association agreements for properties under the approved homeownership program.

(d) *Amounts Available for Reuse.* The recipient shall keep and make available to HUD all records necessary to calculate accurately payments due to HUD under Section 720(d) and Section 725.

(Approved by the Office of Management and Budget under control number 2502–0451)

Section 805. Reports.

The recipient shall submit reports required by HUD.

(Approved by the Office of Management and Budget under control number 2502–0451)

Section 810. Access by HUD and the Comptroller General.

For the purpose of audit, examination, monitoring, and evaluation each

recipient shall give HUD (including any duly authorized representatives and the Inspector General) and the Comptroller General of the United States (and any duly authorized representatives) access to any books, documents, papers, and records of the recipient that are pertinent to assistance received under this notice, including all records required to be kept by Section 801.

IX. Waiver Authority

Section 901. Waiver Authority.

Upon determination of good cause, the Secretary of Housing and Urban Development may waive any provision of this notice, not otherwise required by law, except provisions that establish deadlines for receipt of any modifications to applications. Each such waiver shall be in writing and shall be supported by documentation of the pertinent facts and grounds. This waiver authority may be exercised by the Secretary or the Assistant Secretary for Housing—Federal Housing Commissioner. Where another HUD program regulation is involved, the Secretary or the appropriate Assistant Secretary may waive the regulation. For example, where a waiver to a CDBG regulation is requested for the HOPE 2 program, it may be waived by the Assistant Secretary for Community Planning and Development. The Secretary periodically will publish notice of granted waivers in the **Federal Register**. HUD may change submission deadlines established by this notice by subsequent notice published in the **Federal Register**.

Dated: December 20, 1991.

Jack Kemp,

Secretary.

[FR Doc. 92–586 Filed 1–13–92; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-92-3361; FR-3193-N-01]

HOPE for Homeownership of Multifamily Units Program; Notice of Fund Availability

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of fund availability for FY 1992.

SUMMARY: This NOFA announces the availability of $95 million in funding for mini planning grants, full planning grants, and implementation grants for the HOPE for Homeownership of Multifamily Units Program (HOPE 2). (HOPE is an acronym for Homeownership and Opportunity for People Everywhere.) In the body of this document is information concerning eligible applicants, the funding available for mini planning grants, full planning grants, and implementation grants, the application packages, and their processing. Elsewhere in this issue of the **Federal Register** are the Notices of Fund Availability for HOPE 1, the HOPE for Public and Indian Housing Homeownership Program, and HOPE 3, the HOPE for Homeownership of Single Family Homes Program. Also elsewhere in this issue of the **Federal Register** is the Program Guidelines which revises the HOPE 2 Notice of Program Guidelines published in the **Federal Register** on February 4, 1991. These revised guidelines contain detailed programmatic information and requirements governing the FY 1992 HOPE 2 Program. Similar revised Guidelines for HOPE 1 and 3 also appear in this issue. It is critical that applicants for HOPE 2 planning or implementation grants read and comply with the requirements of the revised Program Guidelines. Many of the requirements of the HOPE 2 program are not repeated in this NOFA, and failure to follow the guidelines will result in applications being rejected by HUD.

DATES: Applications for mini planning grants, full planning grants, or implementation grants for the HOPE 2 Program must be received in the appropriate HUD Field Office Housing Development Division by close of business for that office on April 17, 1992. Applications may also be hand delivered to the appropriate HUD Field Office by close of business for that office on or before the deadline date. Applications sent by facsimile will not be accepted. HUD will not waive this deadline for any reason. No applications may be accepted prior to 30 calendar days before the deadline. Applications submitted more than 30 calendar days before the deadline will be returned to applicants.

ADDRESSES: An original and two copies of the completed application must be submitted to the HUD Field Office having jurisdiction over the locality in which the proposed project is located. The applications should be addressed to the Attention of: Director, Housing Development Division. A list of HUD's Field Offices appears at the end of this NOFA. In States with more than one Field Office, applicants must submit their applications to the correct Field Office. Applicants are advised to contact their local office to confirm the appropriate place and time of close of business for submission. Failure to submit an application to the correct Field Office by the due date will result in disqualification of the application. In addition, one copy of the application should be submitted to the following address: Department of Housing and Urban Development, Office of Resident Initiatives, room 6130, 451 Seventh Street, SW., Washington, DC 20410, Attention: Margaret Milner. While copies must be submitted both to the appropriate HUD Field Office and Headquarters, the date and time of receipt in the Field Office will be used to determine whether the application has been submitted on time.

FOR FURTHER INFORMATION CONTACT: Margaret Milner, Office of Resident Initiatives, Department of Housing and Urban Development, room 6130, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708-4542. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1-800-877-TDDY, 1-800-877-8339, or 202-708-9300. (Telephone numbers, other than "800" TDD numbers, are not toll-free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been approved under the Paperwork Reduction Act of 1980 by the Office of Management and Budget (OMB), and have been assigned OMB control number 2502-0451.

I. Purpose and Substantive Description

A. Authority

The funding made available under this NOFA is authorized by section 421 of the National Affordable Housing Act (Pub. L. 101-625, November 28, 1990), which created the HOPE 2 Program.

B. Allocation Amounts

The purpose of this NOFA is to announce the availability of a total of $95 million in funds, appropriated by the Department's Appropriations Act for fiscal year 1992 (Pub. L. 102-139, October 28, 1991), for grants as follows:

- Up to $15 million for mini planning grants and full planning grants
- $80 million for implementation grants

C. Fungibility of Set-Asides

Any amounts available to fund planning grants that are not needed because of insufficient approvable applications shall be used to fund the highest ranked, unfunded implementation grant applications. Any amounts available to fund implementation grants that are not needed because there are insufficient approvable applications shall be used to fund the highest ranked, unfunded planning grant applications.

D. Mini Planning Grant Cap

The amount of a mini planning grant may not exceed $100,000, except that HUD may, for good cause, approve a grant in a higher amount, based on justification submitted by the applicant demonstrating that the costs are reasonable. Applications for more than $100,000 for projects of more than 250 units do not need to demonstrate good cause if the additional amount requested is not more than $400 for each unit over 250.

E. Planning Grant Cap

The amount of a planning grant may not exceed $200,000, except that HUD may, for good cause, approve a grant in a higher amount, based on justification submitted by the applicant demonstrating that the costs are reasonable. Applications for more than $200,000 for projects of more than 250 units do not need to demonstrate good cause if the additional amount requested is not more than $800 for each unit over 250.

F. Implementation Grant Cap

The amount requested for an implementation grant for each unit may not exceed 120 times the current published fair market rent for existing housing for that unit size, established by HUD under section 8(c) of the 1937 Act. The current fair market rents were published in the **Federal Register** on September 26, 1991 at 56 FR 49024.

G. Eligible Applicants

For mini planning grants, full planning grants, and implementation grants, an

eligible applicant is one of the following entities that represents the residents of the eligible property: an RC (resident council); an RMC (resident management corporation); a cooperative association; a public or private nonprofit organization; a public body, including an agency or instrumentality thereof; a PHA (public housing agency); an IHA (Indian housing authority); or a mutual housing association. Two or more eligible applicants may submit a joint application for a single program.

An applicant may submit an application for either a planning grant or an implementation grant, but not both, for any one eligible property.

H. Certification for Consistency with the Comprehensive Housing Affordability Strategy

Applications for HOPE grants must be accompanied by a certification of consistency with an approved Comprehensive Housing Affordability Strategy (CHAS) or abbreviated housing strategy from the public official responsible for submitting the CHAS, or his or her authorized representative. State and local government applicants must have submitted a full CHAS or an abbreviated strategy, and must provide a certification of consistency at the time of application. All other applicants (including private nonprofit organizations and public housing agencies) must obtain the certification from the lowest level of government having either a full CHAS or an abbreviated strategy covering the jurisdiction in which the program (project) is to be located. Where the program will be carried out in more than one unit of general local government with a CHAS, a certification for each shall be included. Indian Tribes and Indian Housing Authorities are not subject to the requirements for preparation of a CHAS or submission of a certification of consistency with the CHAS.

For an application for a HOPE grant to be consistent with a CHAS: (1) Homeownership for low-income families must be identified as a priority in the narrative and (for local jurisdictions only) Table 3 (Priorities for Assistance) of Section II (Strategy) of the CHAS; (2) the HOPE program for which funding is sought should be mentioned (whether by name or by program type) in the narrative of Section III (Annual Plan) of the CHAS as among the Federal resources to be used in FY 1992; and (3) a specific dollar amount for the HOPE program applied for must be entered in Column A of Table 4/5A (Anticipated Resources and Plan for Investment) of Section III. (**Note:** Since Table 4/5A for States does not include information on applications by entities other than the State itself, a State may certify consistency for a HOPE application from a private nonprofit or a PHA even if there is no dollar amount entered in Column A of the State's Table 4/5A).

If a jurisdiction's strategy identifies low-income homeownership as a priority in the Section II narrative, but does not mention the HOPE program in the Section III narrative or include a specific dollar amount for the program in Column A of Table 4/5A, the jurisdiction may amend its strategy by correcting its Section III narrative and Table 4/5A to be consistent with its strategy without doing a substantial amendment, which requires citizen participation. However, if there is no dollar amount entered in Column A of Table 4/5A and there is also no priority for low-income homeownership identified in the Section II narrative, a substantial amendment, requiring citizen participation, would be needed to modify the CHAS to allow the jurisdiction to provide a certification of consistency.

All CHASs or abbreviated strategies, revised tables and narratives for nonsubstantial amendments, or substantial amendments, as well as the required certifications of consistency, must be submitted to HUD no later than at the time the application for HOPE funding is submitted.

To assist applicants in meeting the certification requirement where a CHAS, abbreviated strategy, or amendment has not yet been approved, HUD will accept applications that are accompanied by a certification that the application is consistent with the housing strategy submitted with, or as amended by a submission with, the application, and that the applicant will follow the strategy so submitted or amended when it is approved by HUD.

II. Planning Grant Applications

A. Application Process

Application packages for mini planning grants and full planning grants, including instructions for preparing applications, are available from the appropriate HUD Field Office (see the list of HUD Field Offices at the end of this NOFA). Additional information regarding the submission of applications is included in the package.

Only timely applications submitted to the correct Field Office will be considered for funding. Applications (original and two copies) must be physically received by the deadline at the appropriate HUD Field Office, Attention: Director, Housing Development Division. In addition, one copy of the application must be submitted to Headquarters, as described in the paragraph above entitled "**ADDRESSES.**" It is not sufficient for an application to bear a postmark date within the deadline. Applications submitted by facsimile will not be accepted.

B. Application Submission Requirements

Complete application submission requirements are contained in the application package. All potential applicants are urged to contact the Resident Initiative Specialist in the Housing Management Division of their HUD Field Office for information and guidance about program requirements and preparation of an application and for the time and place of any workshops and/or training sessions to be held within the Field Office's jurisdiction.

C. Selection Process

The selection process for mini planning grants and full planning grants under the HOPE 2 Program consists of a screening and then, for those applications meeting all screening requirements, review by Field Offices. For applications that meet all program requirements, HUD Headquarters will use these reviews to rate all applications. Rating and ranking of applications will be made under five substantive selection criteria.

D. Screening Process/Corrections to Deficient Applications

1. HUD shall screen each application submitted on or before the deadline to determine if it is complete, is internally consistent, and contains correct computations. Where HUD determines an application is deficient in one or more of these areas, it shall notify the applicant in writing and give it an opportunity to correct the deficiencies in its application. However, the applicant may not substantially revise the application, such as by substituting another eligible property or applicant or changing other fundamental features of the homeownership program, because that would not be fair to other applicants.

2. The notification shall require an applicant to submit additional or corrected material so that it is received in the appropriate HUD Field Office no later than close-of-business on the 14th calendar day after the date of the written notification to the applicant to modify its application. HUD may not extend this deadline for actual receipt of the material for any reason. HUD shall

not consider further any applications that are not complete, are internally inconsistent, or do not contain correct computations, after the opportunity, if any, to submit additional or corrected material.

E. Selection Criteria

Rating and ranking will be done using the following five substantive selection criteria:

1. Capability of the applicant—up to 30 points.
2. Resident and homebuyer interest and marketability—up to 20 points.
3. Suitability of the property—up to 20 points.
4. Local support—up to 20 points.
5. Efficiency—up to 10 points.

A complete description of the procedure for rating applications and of the factors considered under each selection criterion may be found in section 315 of the amended Notice of Program Guidelines.

F. Ranking and Selection

After assigning points under the selection criteria, HUD Headquarters shall rank the planning grant applications. HUD Headquarters shall examine the ranking and, where it determines that applications falling below a certain point total are not suitable or not feasible for homeownership, it may establish a minimum number of points for applications to qualify to be selected for funding. A complete description of the procedures for selection may be found in section 315 of the amended Notice of Program Guidelines.

III. Implementation Grant Applications

A. Application Process

Application packages for implementation grants, including instructions for preparing applications, are available from the appropriate HUD Field Office (see the list of HUD Field Offices at the end of this NOFA). Additional information regarding the submission of applications is included in the package.

Only timely applications received in the appropriate Field Office will be considered for funding. Applications (original and two copies) must be physically received by the deadline at the appropriate HUD Field Office, Attention: Director, Housing Development Division. In addition, one copy of the application must be submitted to Headquarters, as described in the paragraph above entitled "**ADDRESSES.**" It is not sufficient for an application to bear a postmark date within the deadline. Applications submitted by facsimile will not be accepted.

B. Application Submission Requirements

Complete application submission requirements are contained in the application package. All potential applicants are urged to contact the Resident Initiatives Specialist in the Housing Management Division of their HUD Field Office for information and guidance about program requirements and preparation of an application and for the time and place of any workshops and/or training sessions to be held within the Field Office's jurisdiction.

C. Selection Process

The selection process for implementation grants under the HOPE 2 Program consists of a screening, a threshold review, and, for those applications passing threshold review, rating and ranking under eight substantive selection criteria. Field Offices will evaluate the quality of applications, and HUD Headquarters will use these Field Office reviews to rate and rank the applications that meet all program requirements and will make the selections.

D. Screening Process/Corrections to Deficient Applications

1. HUD shall screen each application submitted on or before the deadline to determine if it is complete, is internally consistent, and contains correct computations. Where HUD determines an application is deficient in one or more of these areas, it shall notify the applicant in writing and give it an opportunity to correct the deficiencies in its application. However, the applicant may not substantially revise the application, such as by substituting another eligible property or applicant or changing other fundamental features of the homeownership program, because that would not be fair to other applicants.

2. The notification shall require an applicant to submit additional or corrected material so that it is received in the appropriate HUD Field Office no later than close-of business on the 14th calendar day after the date of the written notification to the applicant to modify its application. HUD may not extend this deadline for actual receipt of the material for any reason. HUD shall not consider further any applications that are not complete, are internally inconsistent, or do not contain correct computations, after the opportunity, if any, to submit additional or corrected material.

E. Threshold Review

HUD shall review each application that qualifies for additional consideration because it passed the screening process to determine if it meets certain threshold criteria. These threshold criteria are contained in section 420 of the amended Notice of Program Guidelines.

F. Selection criteria

HUD Headquarters will rate and rank all applications which pass the threshold review and meet all program requirements, using the following eight substantive selection criteria:

1. Capability of the applicant—up to 15 points.
2. Quality of the program—up to 25 points.
3. Local support—up to 10 points.
4. Resident and homebuyer interest—up to 10 points.
5. Suitability of the property—up to 20 points.
6. Minority Business Enterprise/Women-owned Business Enterprise—up to 5 points.
7. Feasibility and efficiency—up to 15 points.
8. Extent of low-income homeownership—deduction of up to 10 points.

A complete description of the rating of applications and of the factors considered under each selection criterion may be found in section 425 of the amended Notice of Program Guidelines.

G. Ranking and Selection

After assigning points under the rating criteria, HUD Headquarters shall rank the implementation grant applications. HUD Headquarters shall examine the ranking and, where it determines that applications falling below a certain point total are not suitable or not feasible for homeownership, it may establish a minimum number of points for applications to qualify to be selected for funding. HUD Headquarters will rate and rank the applications and make the selections. A complete description of the procedure for selection is contained in section 425 of the amended Notice of Program Guidelines.

IV. Other Matters

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public

inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

B. Federalism Executive Order

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that the provisions in this NOFA are closely based on statutory requirements and impose no significant additional burdens on States or other public bodies. This NOFA does not affect the relationship between the Federal Government and the States and other public bodies or the distribution of power and responsibilities among various levels of government. Therefore, the policy is not subject to review under Executive Order 12612.

C. Family Executive Order

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has also determined that some of the policies in this NOFA will have a potential significant impact on the formation, maintenance, and general well-being of the family. Achievement of homeownership by low-income families in the program can be expected to support family values, by helping families achieve security and independence; by enabling them to live in decent, safe and sanitary housing; and by giving them the skills and means to live independently in mainstream American society. Since the impact on the family is beneficial, no further review is necessary.

D. Section 102 of the HUD Reform Act

On March 14, 1991, the Department published in the **Federal Register** a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (24 CFR part 12, 56 FR 11032). Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by the Department.

Since HUD makes assistance under this program available on a competitive basis, 24 CFR part 12 requires HUD to:

—Ensure that documentation and other information regarding each application submitted to the Department are sufficient to indicate the basis upon which assistance was provided or denied. HUD must make this material available for public inspection for a five-year period. (§ 12.14 (b)) HUD will provide further guidance on how this material may be accessed in a later notice published in the **Federal Register**.

—Publish a notice in the **Federal Register** at least quarterly indicating the recipients of the assistance. (§ 12.16(a))

Subpart C of 24 CFR part 12 requires that applicants seeking assistance from HUD for a specific project or activity make the disclosures required under § 12.32. An implementing notice for part 12, subpart C, is being published in the **Federal Register**. Applicants shall use the form and guidance contained in that notice to make the required disclosures.

E. Section 103 of the HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by 24 CFR part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815; TDD: (202) 708–1112. (These are not toll-free numbers.)

F. Section 112 of the HUD Reform Act

Section 112 of the HUD Reform Act amended the Department of Housing and Development Act by adding section 13, which contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second prohibits the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of the assistance.

Section 13 was implemented by final rule (24 CFR part 86) published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in appendix A of 24 CFR part 86.

Any questions concerning the rule should be directed to Arnold J. Haiman, Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 24410. Telephone: (202) 708–3815; TDD: (202) 708–1112. (These are not toll-free numbers.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

G. Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (The "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance

HUD Field Offices

Region I

Massachusetts

Boston, Massachusetts Regional Office
HUD—Boston Regional Office, Thomas P O'Neill, Jr. Federal Bldg., 10 Causeway St., Room 375, Boston, MA 02222–1092; (617) 565–5234, (TDD) (617) 565–5453

Connecticut

Hartford, Connecticut Office
HUD—Hartford Office, 330 Main St., Hartford, CT 06106–1860; (203) 240–4523 (TDD) (203) 240–4522.

New Hampshire

Manchester, New Hampshire Office

HUD—Manchester Office, Norris Cotton Federal Bldg., 275 Chestnut St., Manchester, NH 03101–2487; (603) 666–7681, (TDD) (603) 666–7518.

Rhode Island

Providence, Rhode Island Office
HUD—Providence Office, 330 John O. Pastore Federal Bldg. & U.S. Post Office—Kennedy Plaza, Providence, RI 02903–1745; (401) 528–5351, (TDD) (401) 528–5364.

Region II

New York

New York Regional Office
HUD—New York Regional Office, 26 Fed. Plaza, New York, NY 10278–0068; (212) 264–6500, (TDD) (212) 264–0927.

Buffalo, New York Office
HUD—Buffalo Office, Lafayette Ct., 5th Floor, 465 Main St., Buffalo, NY 14203–1780; (716) 846–5755, (TDD) (716) 846–5787.

New Jersey

Newark, New Jersey Office
HUD—Newark Office, Military Park Bldg., 60 Park Pl., Newark, NJ 07102–5504; (201) 877–1662, (TDD) (201) 877–6649.

Region III

Pennsylvania

Philadelphia, Pennsylvania Regional Office
HUD—Philadelphia Regional Office, Liberty Sq. Bldg., 105 S. 7th St., Philadelphia, PA 19106–3392; (215) 597–2560, (TDD) (215) 597–5564.

Pittsburgh, Pennsylvania Office
HUD—Pittsburgh Office, 412 Old Post Office and Courthouse Bldg., 700 Grant St., Pittsburgh, PA 15219–1906; (412) 644–6428, (TDD) (412) 644–5747.

District of Columbia

Washington, DC Office—(Category A)
HUD—Washington, DC Office, Union Center Plaza, Phase II, 820 First St., NE., suite 300, Washington, DC 20002–4205; (202) 275–9206, (TDD) (202) 275–0967.

Maryland

Baltimore, Maryland Office
HUD—Baltimore Office, 10 N. Calvert St., 3rd Floor, Baltimore, MD 21202–1865; (301) 962–3047, (TDD) (301) 962–0106.

Virginia

Richmond, Virginia Office
HUD—Richmond Office, 400 N. 8th St., Richmond, VA 23240; (804) 771–2721, (TDD) (804) 771–2820.

West Virginia

Charleston, West Virginia Office
HUD—Charleston Office, 405 Capitol St., suite 708, Charleston, WV 25301–1795; (304) 347–7000 (TDD) (304) 347–7044.

Region IV

Georgia

Atlanta, Georgia Regional Office
HUD—Atlanta Regional Office, Richard B. Russell Fed. Bldg., 75 Spring St., SW., Atlanta, GA 30303–3388; (404) 331–5136, (TDD) (404) 730–2654.

Alabama

Birmingham, Alabama Office
HUD—Birmingham Office, 600 Beacon Pkwy West, suite 300, Birmingham, AL 35209–3144; (205) 731–1617, (TDD) (205) 731–1617.

Kentucky

Louisville, Kentucky Office
HUD—Louisville Office, 601 W. Broadway, P.O. Box 1044, Louisville, KY 40201–1044; (502) 582–5251, (TDD) (502) 582–5139.

Mississippi

Jackson, Mississippi Office
HUD—Jackson Office, Dr. A. H. McCoy Fed. Bldg., 100 W. Capitol St., room 910, Jackson, MS 39269–1096; (601) 965–4702, (TDD) (601) 965–4171.

North Carolina

Greensboro, North Carolina Office
HUD—Greensboro Office, 415 N. Edgeworth St., Greensboro, NC 27401–2107; (919) 333–5361, (TDD) (919) 333–5518.

Puerto Rico

Caribbean Office
HUD—Caribbean Office, San Juan Center, 159 Carlos E. Chardon Ave., San Juan, PR 00918–1804; (809) 766–6121.

South Carolina

Columbia, South Carolina Office
HUD—Columbia Office, Storm Thurmond Fed. Bldg., 1835 Assembly St., Columbia, SC 29201–2480; (803) 765–5592.

Tennessee

Knoxville, Tennessee Office
HUD—Knoxville Office, John J. Duncan Fed. Bldg., 710 Locust St., Knoxville, TN 37902–2526; (615) 549–9384, (TDD) (615) 549–9372.

Nashville, Tennessee Office
HUD—Nashville Office, 251 Cumberland Bend Dr., suite 200, Nashville, TN 37228–1803; (615) 736–5213.

Florida

Jacksonville, Florida Office
HUD—Jacksonville Office, 325 W. Adams St., Jacksonville, FL 32202–4303; (904) 791–2626, (TDD) (904) 791–1241.

Region V

Illinois

Chicago, Illinois Regional Office
HUD—Chicago Regional Office, 77 W. Jackson Blvd., 26th Floor, Chicago, IL 60604–3507; (312) 353–5680.

Michigan

Detroit, Michigan Office
HUD—Detroit Office, Patrick V. McNamara Fed. Bldg., 477 Michigan Ave., Detroit, MI 48226–2592; (313) 226–7900.

Grand Rapids, Michigan Office
HUD—Grand Rapids Office, 2922 Fuller Ave., NE, Grand Rapids, MI 49505–3409; (616) 456–2100.

Indiana

Indianapolis, Indiana Office
HUD—Indianapolis Office, 151 N. Delaware St., Indianapolis, IN 46204–2526; (317) 226–6303.

Minnesota

Minneapolis-St. Paul, Minnesota Office
HUD—Minneapolis-St. Paul Office, 220 2nd St. South, Bridge Place Bldg., Minneapolis, MN 55401–2195; (612) 370–3000

Ohio

Cincinnati, Ohio Office
HUD—Cincinnati Office, Fed. Office Bldg., room 9002, 550 Main St., Cincinnati, OH 45202–3253; (513) 684–2884.

Cleveland, Ohio Office
HUD—Cleveland Office, One Playhouse Sq., 1375 Euclid Ave., room 420, Cleveland, OH 44114–1832; (216) 522–4085.

Columbus, Office Office
HUD—Columbus Office, 200 N. High St., Columbus, OH 43215–2499; (614) 469–5737.

Wisconsin

Milwaukee, Wisconsin Office
HUD—Milwaukee Office, Henry S. Reuss Fed. Plaza, 310 W. Wisconsin Ave., suite 1380, Milwaukee, WI 53203–2289; (414) 297–3214.

Region VI

Texas

Fort Worth, Texas Regional Office
HUD—Fort Worth Regional Office, 1600 Throckmorton, P.O. Box 2905, Fort Worth, TX 76113–2905; (817) 885–5401 (TDD) (817) 885–5447.

Houston, Texas Office
HUD—Houston Office, Nat. Bank of Texas Bldg., 221 Norfolk, suite 200, Houston, TX 77098–4096, (713) 653–3274.

San Antonio, Texas Office
HUD—San Antonio Office, Washington Sq. Bldg., 800 Dolorosa St., San Antonio, TX 78207–4563; (512) 229–6800, (TDD) (512) 229–6885.

Arkansas

Little Rock, Arkansas Office
HUD—Little Rock Office, Lafayette Bldg., 523 Louisiana, suite 200, Little Rock, AR 72201–3523; (501) 378–5931, (TDD) (501) 378–5405.

Louisiana

New Orleans, Louisiana Office
HUD—New Orleans Office, Fisk Fed. Bldg., 1661 Canal St., P.O. Box 70288, New Orleans, LA 70112–2887; (504) 589–7200.

Oklahoma

Oklahoma City, Oklahoma Office
HUD—Oklahoma City Office, Murrah Fed. Bldg., 200 NW 5th St., Oklahoma City, OK 73102–3202; (405) 231–4181, (TDD) (405) 231–4181.

Region VII

Missouri

Kansas City, Missouri Regional Office
HUD—Kansas City Regional Office, Gateway Towers 2, 400 State Ave., Kansas City, KS 66101–2406; (913) 236–2162, (TDD) (913) 236–3972.

St. Louis, Missouri Office
HUD—St. Louis Office, 1222 Spruce St., St. Louis, MO 63103; (314) 965–4702, (TDD) (314) 539–6331.

Nebraska

Omaha, Nebraska Office
HUD—Omaha Office, Braiker/Brandeis Bldg., 210 S. 16th St., Omaha, NE 68102–1622; (402) 221–3703, (TTD) (402) 221–3703.

Iowa

Des Moines, Iowa Office
HUD—Des Moines Office, Fed. Bldg., 210 Walnut St., room 239, Des Moines, IA 50309–2155; (515) 284–4512, (TDD) (515) 284–4706.

Region VIII

Colorado

Denver, Colorado Regional Office
HUD—Denver Regional Office, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202–2349; (303) 844–4513.

Region IX

California

San Francisco, California Regional Office
HUD—San Francisco Regional Office, Philip Burton Fed. Bldg. & U.S. Courthouse, 450 Golden Gate Ave., P.O. Box 36003, San Francisco, CA 94102–3448; (415) 556–4752, (TDD) (415) 556–8357.

Los Angeles, California Office
HUD—Los Angeles Office, 1615 Olympic Blvd., Los Angeles, CA 90015–3801; (213) 251–7122, (TDD) (213) 251–7038.

Sacramento, California Office
HUD—Sacramento Office, 777 12th St., suite 200, P.O. Box 1978, Sacramento, CA 95814–1977; (916) 551–1351, (TDD) (916) 551–5971.

Hawaii

Honolulu, Hawaii Office (Category A)
HUD—Honolulu Office, 7 Waterfront Plaza, suite 500, 500 Ala Moana Blvd., Honolulu, HI 96813–4918; (808) 541–1327, (TDD) (808) 551–1356.

Arizona

Phoenix, Arizona Office
HUD—Phoenix Office, 400 N. 5th St., suite 1600, 2 Arizona Center, Phoenix, AZ 85004; (602) 379–4434, (TDD) (602) 379–4461.

Region X

Washington

Seattle, Washington Office
HUD—Seattle Regional Office, Arcade Plaza Bldg., 1321 2nd Ave., Seattle, WA 98101–2504; (206) 553–5414.

Oregon

Portland, Oregon Office
HUD—Portland Office, Cascade Bldg., 520 SW 6th Ave., Portland, OR 97204–1596; (503) 326–2561.

Alaska

Anchorage, Alaska Office
HUD—Anchorage Office, 222 W. 8th Ave., #64, Anchorage, AK 99513–7537; (907) 271–4170.

Dated: December 20, 1991.

Jack Kemp,

Secretary.

[FR Doc. 92–587 Filed 1–13–92; 8:45 am]
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federal register

Tuesday
January 14, 1992

Part IV

Department of Housing and Urban Development

Office of the Secretary

24 CFR Subtitle A

HOPE for Homeownership of Single Family Homes Program; Program Guidelines and Notice of Fund Availability

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Subtitle A

[Docket No. N-92-3200; FR-2968-N-03]

HOPE for Homeownership of Single Family Homes Program; Program Guidelines

AGENCY: Office of the Secretary, HUD.

ACTION: Program guidelines.

SUMMARY: This document revises HUD's guidelines, published on February 4, 1991 (56 FR 4458), that govern the operation of the HOPE for Homeownership of Single Family Homes program (HOPE 3) that provide for homeownership by low-income families. Included in the amendments is a new Part III, governing planning grants under the HOPE 3 program. This Part was reserved in the February 4, 1991 publication. The amendments take effect immediately. Elsewhere in today's issue of the **Federal Register**, HUD is publishing a Notice of Fund Availability for the HOPE 3 grant program and NOFAs for, and notices amending, the other two HOPE Grant programs:

HOPE for Public and Indian Housing Homeownership (HOPE 1); and

HOPE for Homeownership of Multifamily Units (HOPE 2).

The HOPE Grant programs are authorized by title IV of the Cranston-Gonzalez National Affordable Housing Act (NAHA) (Pub. L. 101-625, enacted November 28, 1990). HOPE is an acronym for Homeownership and Opportunity for People Everywhere.

The purpose of the HOPE Grant programs is to provide homeownership opportunities for low-income families and individuals.

The authorizing legislation provides for implementation by publication of a notice for immediate effect. Comments on the notice published on February 4, 1991 were due September 30, 1991. HUD invites public comment on this notice of program guidelines, especially on the new Part III for planning grants and on the amendments and will consider the comments, together with comments received by September 30, in developing the final rule for the program. As required by the statute, HUD will publish the final rule within eight months from today.

DATES: Effective date: January 14, 1992.

Comment due date: April 15, 1992.

Those sections of these Guidelines that contain information collection requirements with respect to planning grants (Sections 310, 801, and 805), the new Cash and Management Information System (Section 740), and the Environmental Procedures and Standards requirements (Section 745) will not become effective until the Office of Management and Budget has approved the information collection requirements and a separate notice of that fact has been published by HUD in the **Federal Register**.

ADDRESSES: Interested persons are invited to submit comments regarding these guidelines to the Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.-5:30 p.m. Eastern Time) at the above address. Note that comments on the information collection requirements contained in sections 310, 801, and 805 that relate to planning grants, section 740 that relate to the new Cash and Management Information System, and section 745 that relate to the Environmental Procedures and Standards requirements, should also be forwarded to the Office of Management and Budget's Office of Information and Regulatory Affairs, New Executive Office Building, room 3001, Washington, DC, 20303, Attention: Jenny Main, Desk Officer for HUD.

FOR FURTHER INFORMATION CONTACT: John Garrity, Office of Affordable Housing Programs, 202-708-0324. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1-800-877-TDDY, 1-800-877-8339, or 202-708-9300. Department of Housing and Urban Development, room 7158, 451 Seventh Street SW., Washington, DC 20410. (Telephone numbers, other than "800" TDD numbers, are not toll-free.)

SUPPLEMENTARY INFORMATION: The information collection requirements contained in sections 415, 801, and 805 of these amended guidelines that relate to implementation grants have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), and assigned OMB control number 2506-0119. These guidelines add three new collection of information requirements that relate to planning grants at sections 310, 801, and 805 and also add new requirements related to the Cash and Management Information System and Environmental Procedures and Standards at sections 740 and 745. These have been submitted to OMB for expedited review under the Paperwork Reduction Act of 1980. Pending approval of these collections of information by OMB and the assignment of an OMB control number, no person may be subjected to a penalty for failure to comply with these information collection requirements. Upon approval by OMB, a notice containing the OMB approval number will be published in the **Federal Register**. Information on these new requirements is provided as follows:

The annual public reporting burden for the information collection requirements contained in this notice that relate to planning grants, the Cash and Management Information System, and Environmental Procedures and Standards are estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided in this document under the heading, Other Matters. Comments regarding burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, should be sent by February 13, 1992; to the Department of Housing and Urban Development, Rules Docket Clerk, at the address stated above; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3001, Washington, DC 20503, Attention: Jenny Main, Desk Officer for HUD. At the end of the public comment period on this notice, the Department may amend the information collection requirements set out in this notice to reflect public comments or OMB comments received concerning the information collections.

Summary of Amendments to HOPE 3 Guidelines

In addition to the addition of Part III for planning grants (and miscellaneous conforming amendments throughout the guidelines), various clarifications, technical corrections, and a few reorganizations, HUD has made the following significant changes to the guidelines published on February 4, 1991. Potential applicants should read the entire document thoroughly.

Part I. Purpose; Summary; and Relationship to Other Programs

Section 110(a) has been amended to give guidance on the applicability of section 18 of the 1937 Act, with respect

to the disposition of public and Indian housing.

Section 110(b), Termination of Section 8 and Other Rental Assistance, has been corrected to require termination of all section 8 assistance, not just project-based section 8 assistance, before an eligible family acquires an ownership interest in an eligible property. The HOPE 3 program does not provide for the provision of any rental assistance for homeowners.

Part II. Definition

The definition of Applicant has been clarified by noting that a cooperative association may be an eligible applicant only for property it proposes to acquire and transfer to eligible families.

The definition of Eligible Property has been modified to permit use of condominium units in developments containing more than four units to qualify.

The definition of Eligible Property has also been modified to specify that the term "State or local government" means any entity included in the first sentence of the definition of "public body." Under section 446(4) of NAHA, properties eligible for use in the HOPE–3 program are one- to four-unit single family properties owned or held by HUD and certain other designated entities, including "a State or local government." Since the quoted phrase is not limited by its terms to general purpose governments (unlike a number of other HUD program statutes, e.g., CDBG, HOME, and Steward B. McKinney Homeless Assistance, which use the terms "unit of general local government" and "general purpose political subdivision") and since the Department desires to broaden the reach of the HOPE 3 program to the most suitable properties available, the definition has been amended.

This construction is compatible with a listing of governmental designations in the Government Organization report for the 1987 Census of Governments published by the Bureau of Census, U.S. Department of Commerce, which includes special purpose governments and subordinate agencies of the State or local governments. (Although not counted as a separate government such agencies are classified as governmental designations having certain characteristics of governmental units.) The amendment to the definition of "eligible property" in the Guidelines makes clear that properties held by State housing finance agencies and other public bodies are part of the available inventory to ensure a wide choice in selecting the most suitable properties for the program.

The definition of First-Time Homebuyer has been clarified to state that a participant in a homeownership program, such as the Mutual Help and Turnkey III programs, who has not yet acquired title qualifies as a first-time homebuyer.

The definition of Ownership Interest has been amended by noting that mutual housing is eligible only to the extent it provides for the transfer of ownership interests to eligible families. Some forms of mutual housing do not give occupants ownerships rights, such as an equity stake in the property or the right to sell the property (or shares representing the property, as in cooperatives).

The definition of Private Nonprofit Organization has been amended to require that it be a tax exempt entity under section 501(c) of the Internal Revenue Code of 1986.

Part III. Planning Grants

This entire part is new. The February 4 guidelines reserved Part III for planning grants.

Part IV. Implementation Grants

Section 401(c), Overall Limitations, has been amended to limit the total amount of all an applicant's implementation grants in response to any one NOFA to 5 percent of the total available amount for implementation grants under the NOFA, instead of $1 million in any year in any one region.

Section 401(c)(2) permits an applicant to apply for both a planning grant and an implementation grant in response to any one NOFA. If an applicant submits applications for both planning and implementation grants, HUD will review the application for an implementation grant first to determine if it passes all screening and threshold requirements. If the application does, the application for a planning grant will not be processed. If it does not pass all screening and threshold requirements, the applicant's planning grant application will be processed.

A new section 401(d), Scope of Program, has been added to provide that applications which identify a public body (or agency or instrumentality) as the entity to execute the grant agreement may only propose a program to be carried out within the jurisdiction of that entity. Applications which identify a private nonprofit as the entity to execute the agreement may propose a program to be carried out within two or more jurisdictions. No application may propose a program to be carried out in more than one State. These changes are designed to simplify program administration and avoid questions about the legal authority of applicants to carry out their programs.

Section 405(a), Limitations, has been amended to provide that only costs incurred on or after the effective date of the grant agreement qualify for funding under the program.

Section 405, Eligible Implementation Grant Activities, has been reorganized to make paragraph (b)(3), Financial Assistance to Homebuyers, a separate paragraph. This material was formerly under paragraph (b)(2). The new paragraph (b)(3) has also been expanded to clarify the scope of eligible activities.

Section 405(b)(2)(iii)(A) has been amended to provide that the cost of acquisition and rehabilitation paid for from grant funds or from matching funds being contributed may not exceed the cost cap. This corrects an error in the February 4 guidelines.

Section 405(b)(4), Rehabilitation, has been amended to provide that the property shall be rehabilitated to a level that makes it marketable for homeownership to low-income families (those with incomes at or below 80 percent of the median area income). HUD has determined that assistance should not be used to make the units marketable to families with income within 100 percent of the median area income, as was permitted in the February 4 guidelines, in order to assist more families achieve homeownership. HUD has dropped the provision encouraging applicants to undertake rehabilitation that goes beyond applicable minimum standards. While this is still permitted, HUD believes that modest rehabilitation will reduce program costs and make homeownership possible for more low-income families.

Section 405(b)(9), Replacement Reserves, has been extensively revised. A single replacement reserve for all properties under a recipient's program may be established. The rules governing such replacement reserves have been revised extensively and should be reviewed carefully by applicants.

Section 405(b)(12), Economic Development, has been amended to permit only those activities that involve job training or retraining and day care costs of those participating in HOPE 3-approved job training and retraining activities. This will conserve HOPE 3 resources and make assistance for more families possible. In addition, this section has been amended to cap the total amount of planning and implementation grants related to any one homeownership program for economic development activities to

$250,000, consistent with the policies under the HOPE 1 and 2 programs.

Section 410(b)(1)(i), under Matching Requirements for Implementation Grants, has been certified to provide that cash contributions must be contributed permanently for uses under the program to count towards the match.

Section 410(b)(1) (iv) and (vi) have been added to clarify computation of the match. Clause (iv) provides that cash contributions may be made by the applicant, non-Federal public entities, private entities, and individuals, including program income from a Federal grant earned after the end of the award period if no Federal requirements govern their disposition (including UDAG and HoDAG repayments). Clause (vi) provides that the grant equivalent of a below-market interest rate loan to the homebuyer, where all repayments, interest, and other return will not be permanently contributed to the HOPE program, may be counted as a cash contribution, in accordance with specified standards. These provisions were taken from the HOME rule governing match requirements for that program.

Section 410(b)(1)(v) provides that cash contributions may also be made towards the match from sale proceeds from the Turnkey III Homeownership and Mutual Help programs and approved homeownership programs under section 5(h) of the 1937 Act. Section 410(b)(1)(vii) clarifies that a down payment by an eligible family may not count towards the match (since it is counted towards a family's equity and, therefore, cannot be considered a permanent contribution to the program). Finally, section 410(b)(1)(viii) permits amounts that an applicant has requested in an application submitted to the Federal Housing Finance Board for assistance under its Affordable Housing Program to count towards the match, so long as FHFB approves the application before the date HUD approves the HOPE application.

Section 410(b)(2), Administrative Costs, has been amended to state that HUD will credit a contribution for administrative costs from non-Federal sources in an amount up to 7 percent of the amount of the implementation grant for purposes of the match. This will simplify program administration for recipients and HUD. Since no more than 15 of the grant amount plus any match amounts may be used for administrative costs, if a recipient requests funding for more than 8 percent of the grant for administrative costs, if a recipient requests funding for more than 8 percent of the grant for administrative costs, the amount credited towards the match will be reduced to less than 7 percent to stay within the 15 percent limitation. In addition, material from section 410(a) regarding administrative costs has been moved to this section.

Section 410(b)(4), Land or Other Real Property, has been amended in several respects to clarify which cost caps apply in various circumstances. In addition, vacant lots (onto which homes will be moved) may be contributed and count towards the match only if they are on existing streets served with utilities, to avoid excessive costs of making contributed lots usable under the program.

Section 410(b)(5), Infrastructure, has been amended to provide that an infrastructure investment may be counted towards the match only if it was completed after the date that is 12 months before the date of the HUD notification to the applicant of implementation grant approval. This makes the HOPE program substantially consistent with the HOME program. The February 4 guidelines permitted counting infrastructure expenditures only if they were made after the date of HUD approval of the application. In accordance with section 410(c), contributions for eligible activities must generally be provided within four years from the effective date of the grant agreement.

Section 410(b)(6), Debt Forgiveness, has been amended to clarify the applicability of the limitation on the amount that may be counted towards the match.

Section 410(b)(7)(ii), under Other In-Kind Contributions, has been amended to increase the valuation of donated labor, including sweat equity, from $5 an hour to $10 an hour, consistent with recent changes to HUD's Shelter Plus Care program. This section has also been clarified to provide that sweat equity may be counted towards the match only if it is not also counted towards a family's equity.

Section 410(b)(7)(iii) has been added to provide guidance in the case of donated materials and supplies.

Section 410(c), Other Restrictions, has been amended to require that contributions towards the match shall be provided no later than the deadline for completion of program activities except that contributions of taxes, fees, and other charges, may be made after the deadline. The February 4 guidelines set the deadline at the date the family acquired the homeownership interest, except for counseling and training, which HUD has determined was too rigid a rule to be practical.

Section 415(b)(2)(ii), under Applications for Implementation Grants, has been added to provide that, where the match does not apply to an IHA in accordance with Section 410(d), the application shall contain a certification that the IHA has not received, and will not receive, amounts under title I of the Housing and Community Development Act of 1974 for the fiscal year in which HUD obligates the HOPE grant funds.

Section 415(b)(3)(iii) is new. It permits an application from a private nonprofit organization that has applied for tax exempt status under section 501(c) of the Internal Revenue Code of 1986 on or before the date of application to be considered, so long as it receives approval before the effective date of the grant agreement.

Section 415(b)(4), Description of Proposed Homeownership Program, has been amended to permit completion of program activities within four years (instead of three), to give recipients additional time to complete program activities. See, also, the conforming change in Section 705.

Section 415(b)(5), Plan, has been amended to require the procedures described in the application established under paragraph (A) for the selection of eligible families to provide for selection of families that are creditworthy and have the financial capacity to handle the anticipated costs of homeownership.

Paragraph (D) has been corrected. The statute requires that families that legally occupy units on the date the implementation grant application was submitted to HUD be given a preference The guidelines also give a first preference to current residents, consistent with the law's prohibition of displacement. If the unit occupied by a former resident on the date the implementation grant application was submitted to HUD is occupied by a current resident, a vacant unit under the program shall be offered to the former resident at the earliest possible time.

In addition, as required by a recent amendment made by the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1992 (Pub. L. 102–139, October 28, 1991), paragraph (D) has been amended to give a first preference, in the case of vacant properties, to otherwise qualified eligible families who reside in public or Indian housing under the 1937 Act. The plan will also include such measures as may be necessary to inform residents of public and Indian housing developments of this preference, such as informing RMCs, RCs, PHAs, and IHAs or taking other appropriate measures.

Paragraph (G) has been amended to clarify that a family may permit others

to rent space (such as a basement area or a spare bedroom) in the property occupied by the family as its principal residence. Finally, paragraph (5)(ii) has been amended to require the application to identify the organization that will carry out any relocation.

Section 415(b)(6), Eligible Property, has been amended to require that the application anticipate selection of at least five properties under the program. Smaller programs would require excessive and wasteful administrative costs. See, also, Section 420(b)(2)(i)).

Section 415(b)(7), Housing Quality Standards Plan, has been amended to require applicants to establish written rehabilitation standards, consistent with their plans, but not to require submission to HUD.

Section 415(b)(8), Replacement Housing, has been amended to provide that, where section 18 of the 1937 Act applies, the HOPE 3 application shall contain an application under section 18 for the disposition of units in public or Indian housing developments (see, also, Sections 110(a) and 601(d)). Applicants that intend to utilize their HOPE 3 grant in conjunction with a section 5(h) or 21 HUD homeownership development shall be required either to submit as part of the HOPE 3 application package a certification of compliance with an existing section 5(h) or 21 replacement housing plan, or a replacement housing plan under section 5(h) or 21. Applicants should consult the HOPE 3 application package to determine whether the proposed homeownership program is subject to, or exempt from, the requirements of section 18 (including the requirement for a replacement housing plan), or whether alternative requirements (including alternative replacement housing plan provisions) are applicable. HOPE assistance may not be used to fund replacement housing.

Section 415(b)(10), Management Entity, has been clarified. The February 4 guidelines required the application to identify and describe the entity that will manage the property. The amended guidelines permit the applicant to state that it intends to operate and manage the property.

Section 415(b)(12)(i)(A) has been amended to require the application to demonstrate that the monthly expenditure for principal, interest, taxes, and insurance (PITI) by an eligible family that is necessary to complete the sale for the initial acquisition of a unit be no less than 20 percent of adjusted family income. The initial guidelines only included the 30 percent ceiling, and HUD has determined that families should be required to pay a certain minimum amount to avoid possible abuse. HUD may approve a justified request in the application for a floor lower than 20 percent to avoid undue hardship to families, such as where the cost of utilities is high.

Section 415(b)(12)(C) has been added to require applicants to adopt written standards for determining monthly expenditures under the affordability requirements, but not to require submission to HUD.

Section 415(b)(16)(i) has been clarified to state that an authorized representative of the public official who submits the CHAS may make the certification that the application is consistent with the CHAS.

Section 415(b)(16)(ii) has been amended to delete the requirement that an IHA demonstrate that its proposed homeownership program is consistent with the tribal plan. This amendment will simplify the program for entities that lack the administrative resources to carry out detailed planning.

A new section 415(b)(20), Environmental Certification, has been added. The application must contain a certification that the applicant agrees to comply with the applicable environmental laws and authorities at 24 CFR 50.4 and that it will comply with other specified requirements. HUD has determined that an environmental review should be required at the time that each property is being considered for use under the program, rather than being performed before HUD approval of the implementation grant, when only neighborhoods, rather than specific properties, are likely to have been identified. This new requirement is a part of that larger policy change.

A new section 415(b)(21), Nonduplication of Funding, has been added to require the application to contain a certification that the applicant has not and will not receive assistance from the Federal government, a State, or a unit of general local government, or any agency or instrumentality thereof, for activities for which funding is requested in the application.

Section 415(c), Screening, has been clarified. In addition, the scope of the screening has been modified to specify that applications that fail to comply with program requirements will receive no further processing.

Section 420, Threshold Review, has been changed so HUD reviews only the experience and capacity of the applicant and the feasibility of the homeownership program. The threshold criteria for eligibility, completeness, and cost limitations have been deleted, since they will be screened for under section 420(c). At least five potentially suitable properties must be available. The earlier guidelines just required a "sufficient number."

Section 425(a)(4), the rating criterion entitled Relationship to CHAS, has been amended to adjust the score for applications submitted by an Indian tribe or IHA, since consistency with neither a CHAS nor a tribal plan is required.

Section 425(a)(6), the rating criterion entitled MBE/WBE Goals, has been modified to provide that, in determining the extent to which an applicant demonstrates a firm commitment to promoting the use of minority business enterprises or women-owned businesses, HUD will especially consider resident-owned businesses.

Section 425(a)(9), the rating criterion entitled Fair Housing Choice, has been amended to adjust the score for applications submitted by an Indian tribe or IHA when those entities are covered by the Indian Civil Rights Act (see, also, section 505(a)(2)).

Section 425(b), Environmental Review, has been deleted, and discussion of environmental procedures has been moved to a new section 745, since HUD will carry out the environmental review when recipients consider properties for use under the program, not at the application stage. HUD has determined that, since some environmental laws and authorities require approval of specific properties, the guidelines should be revised to delay the review until the time properties are identified for possible use under the program.

Elsewhere in today's edition of the **Federal Register**, HUD has categorically excluded the approval by HUD of HOPE 3 implementation grant applications from environmental assessment under the National Environmental Policy Act (NEPA), because of the lack of potential for significant environmental impact (see the interim rule amending 24 CFR part 50). However, section 745 provides for a threshold determination as to whether review will be required under other environmental laws and authorities. Recipients must obtain HUD approval under section 745 before acquiring or otherwise carrying out any program activities with respect to a specific property.

Section 425(b)(1) has been clarified by making explicit that HUD will review, and may adjust, the ratings initially assigned to applications, in order to ensure consistency among Field and Regional Office scores. The scoring system in section 425(b)(2) has been refined.

Section 425(c), Reduction in Requested Grant Amounts, has been

amended to clarify that HUD may not only approve an application for an amount lower than requested but may also adjust line items in the proposed budget within the amounts requested.

Section 425(d) has been amended to provide that HUD will cancel approval of the application if commitments for replacement housing are not provided in a reasonable period of time.

Section 425(e)(1), under Insufficient Approvable Applications; Reallocation, has been refined.

Section 425(e)(2) has been added to provide, as an alternative reallocation procedure, that amounts not needed to fund implementation grants may be made available to fund planning grants or under a NOFA inviting applications.

Part V. Other Requirements

Section 501, Flood Insurance and Coastal Barriers Resources Act, has been amended to conform to the revised procedure for complying with applicable environmental requirements.

Section 505(c)(2), under Employment Opportunities, as published on February 4 stated that only Indian tribes and IHAs that exercise their powers of self-government were subject to the requirements of the Indian Self-Determination and Education Assistance Act. This is incorrect; the section has been corrected by deleting the incorrect modifier ("as described in section 505(a)(2)").

Section 505(d), Minority and Women's Business Enterprises, has been amended to clarify that, in the case of applications submitted by Indian tribes or IHAs, compliance with various requirements concerning minority and women's business enterprises must be consistent with, but not in derogation of, the Indian Self-Determination and Education Assistance Act.

Section 530, Conflict of Interest, has been modified to provide that a resident of an eligible property may acquire an ownership interest even if he or she would otherwise be excluded by paragraph (a). This will avoid the need for processing applications for exceptions to paragraph (a).

Section 545 is new. Where the applicant is, or proposes to contract with, a primarily religious organization or a wholly secular organization established by a primarily religious organization, the organization shall undertake its responsibilities with respect to the homeownership program in accordance with three specified principles.

Part VI. Grant Agreement—Planning and Implementation Grants

Section 601(c) has been amended to conform with the revised procedure for determining compliance with applicable environmental requirements.

Section 601(d) has been modified to provide that no amounts may be drawn down with respect to public or Indian housing until HUD approves an application under section 18 of the 1937 Act and implementing regulations, approves a homeownership application for conversion to the Turnkey III or Mutual Help program, or approves a homeownership application for, or request for conversion to, section 5(h) or section 21 of the 1937 Act.

A new Section 601(e) has been added stating that the grant agreement will provide that HUD will terminate the grant agreement if commitments for replacement housing are not provided in a reasonable period of time.

Section 601(f) has been clarified to state that HUD may take any appropriate action authorized under the grant agreement if HUD determines the recipient is failing to carry out the program as required. The authority for HUD to take action where it determines a recipient "is likely to fail" has been deleted. On reconsideration, HUD has determined sanctions should be imposed only where a recipient is actually failing to comply with program requirements, not where HUD believes it probably will fail. In addition, a new provision has been added stating that failure to provide at least 70 percent of the number of homeownership opportunities proposed in the application may result in HUD taking remedial action, including requiring repayment of all or part of the grant. This will help assure that the approved programs result in homeownerhip opportunities for eligible families.

Part VII. Implementation of Planning and Implementation Grants

Section 701(c) has been deleted, since it is not appropriate for HUD to provide tax advice to program recipients.

Section 715, Timely Homeownership, has been revised to require properties to be transferred to eligible families within two years from the effective date of the implementation grant agreement, instead of one year from the date of acquisition of the property. This will give recipients more flexibility and make determination of compliance easier since all properties will be subject to the same deadline.

Section 720, Restrictions on Resale by Initial Homeowners, has been reorganized. The provisions limiting the equity interest that an initial homeowner may retain from sale during the first six years of homeownership has been moved to subsection (c) from paragraph (b)(1)(ii)(B). The guidelines published February 4, 1991 were structured in a way that suggested that the resale restrictions during the first six years applied only where the family acquired the property for less than fair market value. HUD does not believe this was the intent of Congress and has reorganized the section accordingly to remove the ambiguity.

Paragraph (a)(2), Right to Purchase, has been amended to set deadlines for RMCs, RCs, and cooperatives that decide to purchase units from homeowners. Such an entity would have 10 days after receiving notice of a firm contract between a homeowner and a prospective buyer to decide whether to exercise its prior right to purchase and 60 additional days to complete closing of the purchase. Where a PHA/IHA or the recipient has a prior right, it would be subject to the same deadlines.

Paragraph (b)(1)(i) has been clarified regarding how the amount of a promissory note, where required, is determined.

In addition, paragraph (c) has been amended. HUD has determined that the inflation adjustment made to the equity a homeowner has in the property should apply to equity that is the result of sweat equity. Accordingly, the guidelines have been amended to provide that the contribution to equity paid by a family may be provided in the form of cash or the value of sweat equity. In addition, the guidelines now provide that the value of any improvements made by the family during the time it owns the home includes improvements made through sweat equity. Sweat equity was previously excluded for purposes of computing inflation adjustments to a family's equity. Finally, a new paragraph (c)(3) has been added to clarify that amounts that count towards a family's equity may not also count towards the match.

A new Section 740 has been added which describes the cash and management information system for the HOPE 3 program.

A new Section 745 has been added establishing the environmental procedures and standards that apply to each property being considered for use under the program, as described in connection with the deletion of Section 425(b).

Part IX. Waiver Authority

Section 901 has been amended to delete the provision that HUD will not waive deadlines for receipt of applications. The policy has not changed, but the guidelines are not the appropriate place for the limit on HUD's waiver authority since the deadline is in the NOFA. The NOFA states this policy.

Part X. Other Matters

Information Collections

HUD has submitted the collection of information requirements for the new planning grant authority under this program, for the new Cash and Management Information System, and for the Environmental Procedures and Standards requirements to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Information on these requirements, and the implementation grant requirements approved under OMB control number 2506–0119, is provided as follows:

Description	No. of respond-ents	No. of responses per respondent	Total annual re-sponses	Hours response	Total
Application—Planning Grants § 310	400	1	400	20	8,000
Application—Implementation Grants § 415	600	1	600	42	25,200
Record Keeping—Planning Grants §§ 801 & 805	200	1	200	8	1,600
Record Keeping—Implementation Grants [1] §§ 801 & 805	400	1	400	40	16,000
Cash & Management Information System—Planning Grants § 740	200	4	800	0.166	133
Cash & Management Information System—Implementation Grants § 740	100	62	6,200	0.2	1,240
Environmental Procedures & Standards § 745	100	23	2,300	3	6,900
					59,073

[1] HUD now anticipates 100 respondents for the first round of funding.

Impact on the Economy

The amendments to these guidelines would not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the guidelines indicates that it would, as defined by that order, not have (a) an annual effect on the economy of $100 million or more; or (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. At the time of publication of the final rule for the program, HUD will update its regulatory impact analysis, based on any comments received.

Environmental Review

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 7th St., SW., Washington, DC 20410.

Impact on the Family

The General Counsel, as the designated official under Executive Order 12606, *The Family*, has determined that the amendments to the guidelines do not have a potential significant impact on the formation, maintenance, and general well-being of the family. Achievement of homeownership by low-income families in the program under the guidelines, as amended, can be expected to support family values, by helping families achieve security and independence; by enabling them to live in decent, safe, and sanitary housing; and by giving them the skills and means to live independently in mainstream American society. Since the impact on the family is beneficial, no further review is necessary.

Federalism Impact

The General Counsel has also determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, *Federalism*, that the amendments to these guidelines are closely based on statutory requirements and impose no significant additional burdens on States or other public bodies. The notice does not affect the relationship between the Federal government and the States and other public bodies or the distribution of power and responsibilities among various levels of government. Therefore, the policy is not subject to review under Executive Order 12612.

Semiannual Agenda

These Guidelines were listed as item number 1332 in the Department's Semiannual Agenda of Regulations published at 56 FR 53380, 53392 on October 21, 1991 under Executive Order 12291 and the Regulatory Flexibility Act.

Impact on Small Entities

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that the amendments to the guidelines would not have a significant economic impact on a substantial number of small entities. The guidelines, as amended govern the procedures under which HUD would make assistance available to applicants under a program designed to provide homeownership opportunities to low-income families and individuals.

Editorial Note: These revised program guidelines will appear in an appendix to subtitle A of title 24 of the Code of Federal Regulations.

Program Guidelines

TABLE OF CONTENTS

I. Purpose; Summary; and Relationship to Other Programs

Section 101. Purpose

The purpose of the HOPE 3 program is to provide homeownership opportunities for eligible families to purchase certain Federal, State, and local government-owned single family properties and units in scattered site, single family public and Indian housing developments.

Section 105. Summary.

HUD will make a planning or implementation grant to selected eligible applicants to assist them in developing and carrying out homeownership programs for eligible families. Planning grants are for the purpose of developing the capacity of recipients and to assist them in preparing implementation grant applications. A recipient will use its implementation grant to acquire eligible property (unless it already owns the property), fund rehabilitation, facilitate the sale of eligible properties to homebuyers, and cover other eligible program costs.

Each recipient is required to assure that the HOPE implementation grant is matched from non-Federal sources. (Certain IHAs may be exempt; see 410(d).) Units must meet specified housing quality standards, and eligible families may not be required to pay more than 30 percent of adjusted income per month for principal, interest, taxes,

and insurance to complete a sale under the program.

Section 110. Relationship to other programs.

(a) *Applicability of Section 18 of 1937 Act.* To the extent eligible property under the HOPE 3 program is a scattered site, single family public or Indian housing development, the requirements of section 18 of the 1937 Act (including the requirement for a replacement housing plan) shall generally govern the disposition of public or Indian housing. However, under certain circumstances, an applicant that wants or utilize its HOPE 3 grant in conjunction with other HUD homeownership programs (e.g., Turnkey III, Mutual Help, or sections 5(h) or 21 of the 1937 Act) may be exempt from the requirements of section 18 altogether, or may be permitted to document compliance with requirements under other HUD homeownership programs (including, in some instances, replacement housing plans). Applicants should consult the HOPE 3 application package to determine whether the proposed homeownership program is subject to, or exempt from, the requirements of section 18, or whether alternative requirements (including alternative replacement housing plan provisions) are applicable.

(b) *Termination of Section 8 and Other Rental Assistance.* Section 8 and other rental assistance shall be terminated before an eligible family acquires an ownership interest in an eligible property.

(c) *Modernization.* HUD may not make available modernization assistance under section 14 of the 1937 Act with respect to a public or Indian housing unit after the date the PHA/IHA transfers title in accordance with a HOPE 3 homeownership program.

(d) *Continuation of Annual Contributions.* Notwithstanding sale of a public or Indian housing development by a PHA/IHA under the HOPE 3 program, HUD shall continue to pay any annual contributions still payable, subject to section 5(a) of the 1937 Act.

(e) *Operating Subsidies.* HUD may not provide operating subsidies under section 9 of the 1937 Act with respect to a public or Indian housing unit after the date the PHA/IHA transfers title in accordance with a HOPE 3 homeownership program.

(f) *Variations to FHA Single Family Mortgage Insurance Programs.* (1) All regulatory requirements and underwriting procedures established for the FHA single family mortgage insurance programs shall apply, except for the changes described in paragraph (f) of this section.

(2) In the single family FHA mortgage insurance programs there is a requirement for a down payment by the mortgagor in cash or the equivalent. Since a recipient under the HOPE 3 program may provide the down payment for the eligible family/mortgagor, section 429 of NAHA amended section 203(b)(9) of the National Housing Act to provide that the required down payment may be paid by a corporation or person other than the mortgagor if the mortgage covers a unit under the HOPE program. Therefore, the regulations at 24 CFR 203.19(b), 203.32(b), 234.28(c) and 234.55(b) were amended by an interim rule published on February 4, 1991, 56 FR 4476. These amendments provide that a mortgagor being assisted in the purchase of a housing unit in connection with the HOPE program may obtain a loan for the down payment from a corporation or another person under conditions satisfactory to HUD. In addition, a second mortgage may be placed against the property even though the entity holding a second mortgage is not a Federal, State, or local government agency, if the entity is designated in the homeownership plan of an applicant for an implementation grant under the HOPE programs.

II. Definitions

1937 Act. The United States Housing Act of 1937.

Administrative costs. Administrative costs that are reasonable and necessary, as described in and valued in accordance with OMB Circular A–87 or A–122,[1] as applicable, incurred by a recipient in carrying out a homeownership program under this notice. For purposes of complying with the 15 percent limitation in Section 405(b)(5), administrative costs do not include the costs of activities which are separately eligible under Section 405 or Section 410.

Applicant. A private nonprofit organization; a cooperative association; or a public body (including a PHA, an IHA, and an agency or instrumentality of a public body) in cooperation with a private nonprofit organization. A cooperative association may be an eligible applicant only for eligible property it proposes to acquire and transfer ownership interests in to eligible families under a homeownership program.

CHAS. A comprehensive housing affordability strategy under section 105 of NAHA. See 24 CFR part 91.

[1] See Section 510(b) concerning the availability of OMB Circulars.

Cooperative association. An association organized and existing under applicable State and local, or tribal, law primarily for the purpose of acquiring, owning, and operating housing for its members or shareholders, as applicable.

Displaced homemaker. An individual who—

(a) is an adult;

(b) has not worked full-time full-year in the labor force for a number of years (at least two) but has, during such years, worked primarily without remuneration to care for the home and family; and

(c) is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

Eligible family. A low-income family who is a first-time homebuyer.

Eligible property. A single family property, containing no more than four units, that is owned or held by HUD, the Secretary of Veterans Affairs, the Secretary of Agriculture, the Resolution Trust Corporation, a State or local government (including any in rem property), or a PHA/IHA. This definition includes a condominium unit and scattered site single family public housing and properties held by institutions within the jurisdiction of the Resolution Trust Corporation. A cooperative unit shall be located in a cooperative development containing no more than four units to qualify as eligible property under the HOPE 3 program. In the case of two- to four-unit property, only property that may be divided so each unit may be acquired by an eligible family is eligible. Only property that is debt free and has an otherwise clear title on the date it is acquired by the recipient or other entity for transfer to eligible families is eligible. For purposes of this definition, the term *State or local government* means any entity included in the first sentence of the definition of public body.

First-time homebuyer. An individual and his or her spouse (if any) who have not owned a home during the 3-year period before purchase of a home with assistance under the HOPE 3 program, except that—

(a) Any individual who is a displaced homemaker may not be excluded from consideration on the basis that the individual, while a homemaker, owned a home with his or her spouse or resided in a home owned by the spouse;

(b) A participant in a program such as the Mutual Help or Turnkey III program under the 1937 Act who has not yet acquired title qualifies as a first-time homebuyer; and

(c) Any individual who is a single parent may not be excluded from consideration as a first-time homebuyer on the basis that the individual, while married, owned a home with his or her spouse or resided in a home owned by the spouse.

Homeownership program. A program for homeownership meeting the requirements under this notice. The program shall provide for acquisition by eligible families of ownership interests in the units in an eligible property under an ownership arrangement approved by HUD under this notice, for occupancy by the eligible families. All eligible properties shall be acquired by eligible families.

HUD. The United States Department of Housing and Urban Development.

IHA. An Indian housing authority, which means any entity that—

(a) Is authorized to engage in or assist in the development or operation of low-income housing for Indians; and

(b) Is established (1) by exercise of the power of self-government of an Indian tribe independent of State law; or (2) by operation of State law providing specifically for housing authorities for Indians, including regional housing authorities in Alaska.

Indian housing development. An Indian public housing project under the 1937 Act.

Low-income family A family or individual that qualifies as a low-income family under 24 CFR part 913 (where the recipient is a PHA/IHA, RMC), part 813 (unless the recipient is a PHA/IHA, RMC, or RC), or part 905 (for Indian housing), as appropriate. NAHA changed the term lower income family to low-income family; these terms have the same meaning. In general, 24 CFR parts 813, 913, and 905 define the term lower income family as a family whose annual income does not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 80 percent of the median income for the area on the basis of its finding that such variations are necessary because of the prevailing levels of construction costs or unusually high or low family incomes.

NAHA. The Cranston-Gonzalez National Affordable Housing Act, Public Law 101–625.

NOFA. Notice of Fund Availability.

Nonprofit organization. Any nonprofit organization that—

(a) Is organized and existing pursuant to Federal, State, local, or tribal law;

(b) Has no part of its net earnings inuring to the benefit of any individual, corporation, or other entity;

(c) Has a voluntary board;

(d) Has an accounting system or has designated a fiscal agent in accordance with requirements established by HUD; and

(e) Practices nondiscrimination in the provision of assistance.

Ownership interest. Ownership by an eligible family by fee simple title to a unit in an eligible property (including a condominium unit), ownership of shares of or membership in a cooperative, or another form of ownership proposed and justified by the applicant and approved by HUD. The ownership interest may be subject only to (a) the restrictions on resale required or approved under section 720; (b) mortgages, deeds of trust, or other liens or instruments securing debt on the property as approved by HUD; or (c) any other restrictions or encumbrances which do not impair the good and marketable nature of title to the ownership interest. Mutual housing is eligible only to the extent it provides for the transfer of ownership interests to eligible families.

PHA. A public housing agency, which means any State, county, municipality, or other governmental entity or public body (or agency or instrmentality thereof) which is authorized to engage in or assist in the development or operation of low-income housing.

Private nonprofit organization. A nonprofit organization that is privately controlled and that is a tax exempt entity under section 501(c) of the Internal Revenue Code of 1986. For purposes of this requirement, private nonprofit organizations shall have governing bodies which are controlled 51 percent or more by private individuals who are acting in a private capacity. For purposes of this provision, an individual is considered to be acting in a private capacity if the individual is not legally bound to act on behalf of a public body (including the applicant or recipient), and is not being paid by a public body (including the applicant or recipient) while performing functions in connection with the nonprofit organization.

Public body. Any State of the United States; any city, county, town, township, parish, village, or other general purpose political subdivision of a State; the Commonwealth of Puerto Rico, the District of Columbia, Guam, the Northern Mariana Islands, the Virgin Islands, American Samoa, the Federated States of Micronesia and Palau, the Marshall Islands, or a general purpose political subdivision thereof; any Indian tribe, as defined in title I of the Housing and Community Development Act of 1974; any public agency or instrumentality of any of the foregoing jurisdictions which is created by or pursuant to State or local, or tribal, law and for which the applicable jurisdiction has agreed to accept financial responsibility in the event of any noncompliance or liability under the HOPE 3 program; and any PHA or IHA. For purposes of this definition, an organization which meets the requirements of paragraphs (a) and (b) of the definition of nonprofit organization, but is controlled 51 percent or more by public officials acting in their official capacities, may qualify as a public body.

Public housing development. A public housing project under the 1937 Act.

RC. A resident council, which means any incorporated non-profit organization or association that—

(a) Is representative of the residents of the eligible property;

(b) Adopts written procedures providing for the election of specific officers on a regular basis (but at least once every three years); and

(c) Has a democratically elected governing board, elected by the residents of the eligible property, the voting membership of which consists of residents of the property.

Recipient. An applicant approved to receive a grant under this notice or such other entity specified in the HUD-approved application that will assume the obligations of the recipient under this notice.

RMC. A resident management corporation that proposes to enter into, or enters into, a management contract for eligible property and that—

(a) Is a nonprofit organization that is incorporated under the laws of the State or tribe in which it is located;

(b) May be established by more than one resident organization or RC, so long as each such organization or RC (1) approves the establishment of the RMC and (2) has representation on the board of directors of the RMC;

(c) Has an elected board of directors;

(d) Has by-laws that require the board of directors to include representatives of each resident organization or RC involved in establishing the corporation;

(e) Provides that its voting members are residents of the eligible property it manages or will manage under a homeownership program and of any other property or public or Indian housing developments;

(f) Is approved by the RC; if there is no RC, a majority of the households of the eligible property shall approve the establishment of an RC to determine the feasibility of establishing a corporation to manage the property; and

(g) May serve as both the RMC and the RC, so long as the RMC qualifies as an RC.

Single parent. An individual who—

(a) Is unmarried or legally separated from a spouse; and

(b)(1) Has one or more minor children for whom the individual has custody or joint custody; or (2) is pregnant.

III. Planning Grants

Section 301. Planning grants.

(a) *General authority.* (1) HUD will make HOPE 3 planning grants to applicants for the purpose of developing HOPE 3 homeownership programs.

(2) Planning grants will assist an applicant to establish or increase its capacity to apply for and carry out a HOPE 3 homeownership program.

(3) HUD shall select applications based on a national competition.

(b) *Overall limitations.* (1) An applicant may apply for a planning grant and an implementation grant in response to any one NOFA. An applicant that has previously received a HOPE 3 implementation grant is not eligible for a HOPE 3 planning grant. If an applicant submits applications for both planning and implementation grants, HUD will review the application for an implementation grant first to determine if it passes all screening and threshold requirements. If the application does, it will be processed (and the application for a planning grant will not be processed). If it does not pass all screening and threshold requirements, the applicant's planning grant application will be processed instead.

(2) The amount of a planning grant under this section may not exceed $100,000.

(3) Activities under a planning grant shall be carried out within 12 months of the effective date of the planning grant agreement.

Section 305. Eligible planning grant activities.

Planning grants may be used for the reasonable costs of only the following eligible activities necessary to develop homeownership programs. No additional activities may be approved. Only costs incurred on or after the effective date of the grant agreement qualify for funding under the program. HUD invites comments on whether the final rule should permit HUD to approve other activities than those in the following list. Specific examples of activities that the commenter believes are appropriate for funding from a HOPE 3 planning grant but would not qualify under this section should be included in the comment.

(a) *Assessing stock of eligible properties.* Assessing the availability on an ongoing basis of eligible properties of the appropriate condition, type, and price in specific neighborhoods or areas to implement a homeownership program. For example, planning grants may be used to fund the costs of obtaining and analyzing lists of potentially eligible properties from appropriate Federal, State, and local agencies and inspecting representative properties. Technical studies to evaluate environmental problems and to determine whether mitigation is feasible are eligible.

(b) *Training of and technical assistance to applicants.* Training of and technical assistance to applicants related to development of a specific homeownership program. This may cover, for example, such activities as providing guidance to the applicant in establishing cooperative, condominium, and other homeownership entities, and examining alternative approaches for carrying out a homeownership program. Training and technical assistance may only be provided by qualified entities other than the applicant.

(c) *Feasibility studies.* Studies of the feasibility of a specific homeownership program, including whether the program can be designed to meet the affordability standards under section 415(b)(12) and achieve financial feasibility.

(d) *Preliminary architectural and engineering work.* Preliminary architectural and engineering work, including developing estimates of the amount of work necessary to support rehabilitation of a typical unit that may be acquired by an eligible family under the program and other cost estimates to be included in a HOPE 3 implementation grant application.

(e) *Identification of counseling and training curricula and sources.* (1) Identification of course curricula and sources that can provide homebuyer and homeowner counseling and training, including such subjects as personal financial management, home maintenance, home repair, construction skills (to the extent appropriate, especially where eligible families will do some of the rehabilitation ("sweet equity")), and general rights and responsibilities of a homeowner.

(2) Where the application indicates that the applicant intends to identify particular occupied units in eligible, scattered site public or Indian housing developments to be used for cooperative or condominium homeownership under the HOPE 3 program, counseling and training of potential homebuyers.

(f) *Economic development planning.* (1) Planning for economic development activities that are eligible implementation grant activities under section 405(b)(12).

(2) The application shall demonstrate that the proposed activities are directly related to implementation of the homeownership program, and describe how these activities promote self-sufficiency.

(g) *Security plans.* Development of security plans. This activity may cover, where applicable, assessing the need for the hiring of security personnel and creating tenant patrols, for negotiating agreements with local law enforcement agencies, and for providing security systems.

(h) *Application for an implementation grant.* Preparation of an application for an implementation grant under section 415 of this notice.

(i) *Administrative costs.* Administrative costs necessary to carry out the eligible activities specified in the approved application.

Section 310. Applications for planning grants.

(a) *NOFA.* An application for a planning grant shall be submitted by an applicant in accordance with this notice and the NOFA. The NOFA advises potential applicants how to obtain an application package and establishes deadlines and other requirements for submission of applications. The NOFA also informs each applicant that it may request information and guidance from HUD about program requirements and preparation of the application.

(b) *Application contents.* Each application shall contain the information required by the application package, including at least the following items.

(1) *Request for planning grant.* The application shall contain (i) the amount of the grant requested; (ii) a reasonable schedule for completing the activities, but in no case may activities extend beyond 12 months; and (iii) a description of the type and number of personnel necessary to complete the activities.

(2) *Proposed activities.* The application shall specify the proposed activities in sufficient detail to permit HUD to determine if the planning grant activities are eligible and feasible.

(3) *Qualifications and experience of applicant.* (i) The application shall describe the applicant and contain a statement of its qualifications, including qualifications and experience in providing housing for low-income families.

(ii) If two or more entities join in submitting an application, such as a

public body in cooperation with a private nonprofit organization or two private nonprofit organizations, the application shall specify which entity will assume legal responsibility as the recipient and execute the grant agreement. The application shall include a copy of the written agreement between the entities that delineates their respective roles.

(iii) An application from a private nonprofit organization that has applied for tax exempt status under section 501(c) of the Internal Revenue Code of 1986 on or before the date of application may be considered so long as the organization is approved before the effective date of the grant agreement.

(4) *Eligible properties and families.* (i) The application shall identify the governmental entity that currently owns or holds eligible properties likely to be involved in a homeownership program in the general locations proposed in the applications.

(ii) The application shall describe the composition of the potential homebuyers and residents likely to participate, including family size and income, and racial, ethnic, and gender characteristics as required by HUD.

(iii) The application shall describe the general locations from which the applicant expects to identify neighborhoods containing properties to be acquired under the program and describe the racial and ethnic characteristics of residents of the general locations or, if the application identifies specific neighborhoods, of the neighborhoods. The application shall propose to identify at least 10 properties in each general location which would be eligible for use under the program.

(iv) The application shall demonstrate that at least 10 eligible properties would be available for use under the program.

(5) *CHAS certification.* (i) The application shall contain a certification by the public official, or his or her authorized representative, who submits the Comprehensive Housing Affordability Strategy (CHAS) that the proposed activities are consistent with the approved CHAS of the State or unit of general local government within which the homeownership program would be located. Where the program will be carried out in more than one unit of general local government with a CHAS, a certification from each shall be included.

(ii) Paragraph (b)(5)(i) of this section shall not apply to an application submitted by an Indian tribe or IHA. Indian tribes and IHAs are not included in the definition of a "jurisdiction," the entity charged with submitting a CHAS. HUD has concluded that Indian tribes and IHAs need not submit a CHAS and need not submit a certification of consistency with a housing strategy.

(6) *Equal opportunity certifications.* (i)(A) The application shall contain a certification that the applicant will comply with the requirements of the Fair Housing Act, title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973; and the Age Discrimination Act of 1975, and will affirmatively further fair housing; or

(B) In the case of an application from an Indian tribe or IHA, under the circumstances described in section 505(a)(2) of this notice, a certification that the applicant will comply with the Indian Civil Rights Act (25 U.S.C. 1301 *et seq.*), section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

(ii) The application shall contain a statement from the applicant (A) whether or not a desegregation order, agreement, or plan that applies to the applicant is in effect or known to the applicant to be under consideration; (B) that the applicant is not in violation of any existing desegregation order, compliance agreement, or voluntary agreement, or a statement describing the circumstances of the violation; and (C) describing any potential impact the proposed homeownership program may have on implementing any existing or pending order, agreement, or plan.

(7) *Nonduplication of Funding.* The application shall contain a certification that the applicant has not and will not receive assistance from the Federal government, a State, or a unit of general local government, or any agency or instrumentality thereof, for activities for which funding is requested in the application.

(8) *Other requirements.* The application shall contain other certifications and information required by the application package.

(c) *Screening.* (1) HUD shall screen each application submitted on or before the deadline set forth in the NOFA to determine whether it is complete, is internally consistent, and contains correct computations. In addition, HUD shall determine whether there appears to be a sufficient number of suitable, available eligible properties in the general locations identified in the application for the proposed activities. For this purpose, at least 10 suitable eligible properties must be determined to be available.

(2) Where HUD determines an application is deficient in one or more of these areas, it shall notify the applicant in writing and give it an opportunity to correct the deficiencies in its application. However, the applicant may not substantially revise the application, such as by substituting another applicant or changing other fundamental features of the homeownership program, because that would not be fair to other applicants. The notification shall require applicants to submit additional or corrected material so that it is received in the appropriate HUD office no later than close-of-business on the 14th calendar day after the date of the written notification to the applicant giving it an opportunity to modify its application. HUD may not extend this deadline for actual receipt of the material for any reason. HUD shall not consider further any applications that do not meet one of the tests in paragraph (c)(1) of this section, after the opportunity, if any, to submit additional or corrected material, or that fail to comply with other program requirements.

(3) The purpose of this procedure is to increase the number of approvable applications so viable homeownership opportunities may be developed at the earliest possible time, while giving each applicant an equal opportunity to receive HUD assistance and correct deficiencies. HUD anticipates that many applicants will be relatively new and might need this additional opportunity to revise their applications. HUD invites comments on this policy, including recommendations on whether it should be adopted or modified in the final regulations.

Section 315. Rating, ranking, and selection of planning grant applications.

(a) *Rating.* HUD shall review each application that qualifies for additional consideration under the screening procedures in section 310(c) and assign points in accordance with the following selection criteria—

(1) *Capability.* The ability of the applicant to develop a HOPE 3 homeownership program in a reasonable time and in a successful manner In assigning points for this criterion, HUD shall consider evidence in the application demonstrating—

(i) the capability of the applicant to develop a HOPE 3 homeownership program, demonstrated through previous experience of the applicant or key staff in managing acquisition, rehabilitation, construction, real estate financing, counseling and training, or other relevant activities, or by an explanation of how such capability will be obtained—20 points.

(ii) the ability of the applicant to handle financial resources, demonstrated through such evidence as previous experience of the applicant or

key staff and existing financial control procedures, or an explanation of how such capability will be obtained—20 points.

Maximum points for this criterion (1): 40 points.

(2) *Local support.* In assigning points for this criterion, HUD shall consider—

(i) The extent of interest of the unit of general local government or Indian tribe, where applicable (and the PHA/IHA where it is not part of the unit of general local government or Indian tribe and where public or Indian housing is expected to be used under the program) in support of a homeownership program, demonstrated through evidence of intent to provide assistance, such as social services (including counseling and training), rehabilitation loans or grants, interest rate subsidies, water and sewer improvements, street and sidewalk improvements, and tax abatements—10 points.

(ii) The extent of interest of the local community (including places of worship, banks, neighborhood or community organizations, the business community, or other community groups) in support of a homeownership program, demonstrated through evidence of intent to provide assistance such as the donation of labor or materials, interest rate reductions or other financing subsidies, and volunteer assistance in some aspect of the program (activities of the applicant shall not be considered under this subcriterion (ii))—10 points.

Maximum points for this criterion (2): 20 points.

(3) *Need for homeownership program.* In assigning points for this criterion, HUD shall consider the relative percentage of the total number of rental households consisting of persons with incomes at or below the poverty level, as determined by the Bureau of Census, in the applicable jurisdiction or jurisdictions.

Maximum points for this criterion (3): 20 points.

(4) *Planning approach.* The extent to which the proposal represents a sound approach to planning, demonstrates an understanding of the nature and scope of activities required to successfully implement a homeownership program, and is likely to result in a successful homeownership program.

Maximum points for this criterion (4): 20 points.

Maximum total points: 100 points.

(b) *Ranking and selection.* (1) After assigning points to each application under paragraph (a) of this section, HUD shall review and may adjust the ratings to ensure consistency among Field and Regional Office scores. HUD shall then rank the planning grant applications. Where HUD determines that applications falling below a certain point total are not suitable or not feasible for developing a homeownership program, it may establish a minimum number of points for an application to be selected.

(2) The purpose of planning grants is to build the capacity of applicants to submit approvable implementation grant applications. Accordingly, for applications which qualify for selection under paragraph (b)(1) of this section, HUD shall award bonus points to planning grant applications in HUD Regions where funds from the initial allocation to the Region under the NOFA remain after selection of all approvable implementation grant applications. The points shall be assigned as follows:

Percentage of initial allocation unused	Points
10% through 25%	10
More than 25% through 50%	15
More than 50%	20

(3) HUD shall then select the three highest ranking applications in each HUD Region.

(4) HUD shall then select the highest ranking remaining applications without regard to their location. However, no more than a total of 20 applications may be approved in any one Region unless they would otherwise be selected without receiving bonus points.

(5) If two or more applications receive the same number of points and sufficient funds are not available to fund all such applications, the application or applications requesting the smallest grants shall be selected if a sufficient amount remains to fund them. If two or more tied applications request the same amount and sufficient funds are not available to fund all such applications, the following system will be used to break the ties:

(i) If the tied applications are for programs to be carried out in different jurisdictions, the one(s) with the highest number of points for Need for Homeownership Program (criterion (3)) shall be selected, if sufficient funds remain.

(ii) If the tied applications are to be carried out in the same jurisdiction, the one(s) with the highest number of points for planning Approach (criterion (4)) shall be selected, if sufficient funds remain.

If any amounts remain after applying these procedures, they shall be reallocated in accordance with paragraph (e) of this section.

(6) Procedural errors discovered after initial ratings but before notification of applicants shall be corrected and rankings revised. Procedural errors discovered after notification of approved applicants which, if corrected, would result in approval of an application which was not approved will be corrected by funding the application from any unused amounts or "off the top" from amounts available for planning grants in the next funding round.

(7) If two or more applications propose substantially the same general locations, only the highest ranking application will be selected.

(c) *Reduction in requested grant amounts.* HUD shall approve an application for an amount lower than the amount requested or adjust line items in the proposed budget within the amount requested (or both) if it determines that (1) the amount requested for one or more eligible activities is unreasonable or unnecessary, (2) an activity proposed for funding does not qualify as an eligible activity, or (3) the amount requested exceeds the $100,000 cost limitation established for the program. In addition, HUD may approve an application for a lower amount if it determines the applicant is not able to carry out all of the activities requested, or insufficient amounts remain in that funding round to fund the full amount requested in the application.

(d) *Notification of approval or disapproval.* After completion of the ranking and selection of applications, but no later than six months after the date of submission of the application, HUD shall notify the selected applicants and the applicants that have not been selected, in writing. HUD's notification to the applicant or the amount of the grant award, based on the approved application, shall constitute a grant obligation by HUD, subject to acceptance by the applicant through execution of the grant agreement by the deadline specified in the notification.

(e) *Insufficient approvable applications; reallocation.* (1) If funds remain after HUD approves all approvable planning grant applications in accordance with this section, HUD shall combine them with amounts being reallocated to Regions having more implementation grant applications meeting threshold requirements than could be funded, in accordance with § 425(e); publish a NOFA inviting additional applications for planning or implementation grants, or both, in accordance with this notice; or invite applicants who submitted applications

that could not be funded to submit amended planning grant or implementation grant applications in accordance with this notice within a deadline specified in the invitation.

(2) Amounts that become available due to deobligation of grant amounts shall be available for reallocation in accordance with paragraph (e)(1) of this section.

(f) *Environmental Review.* HUD has determined that its approval of applications for planning grants is categorically excluded from environmental review and compliance requirements of the National Environmental Policy Act of 1969 (NEPA) and that other Federal environmental laws and authorities listed in 24 CFR 50.4 are not applicable. The reason is that planning grants involve no rehabilitation and little or no physical change and that, generally, not enough information is available about the proposed homeownership program at this point to make the review. HUD has excluded planning grant applications from environmental assessment under NEPA and exempted planning grant applications from environmental review under the laws and authorities listed in 24 CFR 50.4. See the interim rule amending 24 CFR part 50 that is published elsewhere in today's edition of the Federal Register. Applicants are reminded, however, that environmental review at the implementation grant stage may nevertheless result in disapproval.

Section 320. Post-approval requirements.

(a) *Timely completion of activities.* A recipient shall complete all activities approved under a planning grant application within 12 months from the effective date of the grant agreement. Recipients may draw down amounts under the Cash and Management Information System, in accordance with Section 740, for one additional month, to allow them to pay outstanding obligations for work performed during the 12-month grant period, and for one more additional month, to allow them to pay costs of preparing the report required under paragraph (b) of this section. HUD may deobligate amounts not drawn down by this deadline.

(b) *Performance report.* Each recipient shall submit a report on activities undertaken under the grant agreement, including the recipient's determination whether it is feasible for it to undertake a homeownership program and an assessment of the factors used to make the determination. Each recipient shall submit its performance report to HUD no later than 13 months from the effective date of the grant agreement.

IV. Implementation Grants

Section 401. Implementation grants.

(a) *Implementation Grants.* HUD shall make implementation grants to applicants for the purpose of carrying out homeownership programs approved under this title.

(b) *Regional Fund Allocations.* HUD shall allocate funding authority for each of the 10 HUD Regions by formula, based on three equally weighted factors—

(1) the number of rental units in the Region, as determined by the Bureau of the Census, occupied by persons with incomes at or below the poverty level (half of the weight for this factor), and the total number of occupied rental units in the Region (for the other half);

(2) The number of rental units in the Region that are unsuitable because they (i) lack or have incomplete plumbing; (ii) are occupied by residents who are paying more than 30 percent of adjusted income towards rent (including utilities); (iii) are occupied by an average of more than one person in the household per room; or (iv) lack or have incomplete kitchens; and

(3) The number of single family properties (with up to four units, including condominium units) in the Region owned by HUD, the Resolution Trust Corporation in its affordable housing inventory, or the Department of Veterans Affairs.

Paragraphs (b) (1) and (2) of this section measure the need for the program and paragraph (b)(3) of this section measures the supply of eligible property available for the program.

(c) *Overall Limitations.* (1) HUD may approve more than one grant for a program to be carried out in a jurisdiction, so long as different applicants are the grantees and the programs will be carried out in different neighborhoods. A single applicant may apply for more than one implementation grant, but HUD will not approve grants for any one applicant that total more than 5 percent of the amount available under any one NOFA for HOPE 3 implementation grants.

For purposes of this limitation, the applicant identified in the application as the legally responsible lead entity which will execute the grant agreement will be considered the applicant. The purpose of this limitation is to give as many applicants as possible an opportunity to develop homeownership programs and to fund applicants in various areas of the country.

(2) An applicant may apply for a planning grant and an implementation grant in response to any one NOFA. If an applicant submits applications for both planning and implementation grants, HUD will review the application for an implementation grant first to determine if it passes all screening and threshold requirements. If the application does, it will be processed (and the application for a planning grant will not be processed). If it does not pass all screening and threshold requirements, the applicant's planning grant application will be processed instead.

(3) No amendments to increase previously approved grant amounts are allowed.

(d) *Scope of Program.* Applications which identify a public body (or agency or instrumentality thereof) as the entity to execute the grant agreement may only propose a program to be carried out within the jurisdiction of that entity. Applications which identify a private nonprofit organization as the entity to execute the grant agreement may propose a program to be carried out within two or more jurisdictions. No application may propose a program to be carried out in more than one State.

Section 405. Eligible implementation grant activities.

(a) *Limitations.* Implementation grants may be used for the reasonable costs of eligible activities necessary to carry out homeownership programs. Only costs incurred on or after the effective date of the grant agreement qualify for funding under the program.

(b) *Eligible Activities.* Eligible activities include—

(1) *Architectural and Engineering Work.* Architectural and engineering work, and related professional services required to prepare architectural plans or drawings, write-ups, specifications, or inspections.

(2) *Acquisition of Eligible Properties*—(i) *General.* Acquisition of eligible properties for the purpose of transferring ownership interests to eligible families in accordance with a homeownership program that meets the requirements under this notice. (Where the applicant owns the eligible property or where HUD otherwise determines that an "arms length" relationship for acquisition does not exist, program funds may not be used for acquisition of the property for the program.)

(ii) *Maximum Acquisition Costs.* (A) The cost of acquiring an eligible property (by an applicant or other entity for transfer to eligible families or by eligible families), which may not exceed

the as-is fair market value of a property for residential use, taking into account any applicable low-income use restrictions, determined in accordance with a recent appraisal conducted under procedures established or approved by HUD, plus reasonable and customary closing costs charged for comparable transactions in the market area.

(B) Where the eligible property is a public or Indian housing development, the cost of acquisition is not an eligible cost, but closing and other costs related to acquisition of the development are eligible costs. Where a public or Indian housing development contains improvements provided through local tax revenues that increased the value of the development, an applicant may request HUD to approve the use of program funds to pay the PHA/IHA for the depreciated value of the improvements paid for from local tax revenues. The request for the approval shall document the original contribution, state the basis for computing the amount of the depreciated value, and otherwise justify the request.

(iii) *Maximum Cost of Acquisition and Rehabilitation.* (A) The cost of acquisition and rehabilitation paid for from grant funds or from matching funds being contributed may not exceed 80 percent of the maximum amount that may be insured under section 203(b) of the National Housing Act (including any high-cost area adjustments), plus reasonable and customary closing costs charged for comparable transactions in the market area. (The cost of acquisition of a unit in a public or Indian housing development is not an eligible cost.) The maximum cost of rehabilitation that may be paid for from grant funds and matching funds may not exceed $33,500 for any unit (which shall not be adjusted for high-cost areas).

(B) For example, in Columbus, Ohio, a recipient could pay no more than $71,200 from grant funds and matching funds provided by HUD for the cost of acquisition and rehabilitation of a one-unit single family property. This limitation was determined by multiplying the FHA single family mortgage insurance limit for a one-unit property in Columbus by 80 percent ($89,000 × 80% = $71,200). Within this overall limitation, the recipient could spend up to $33,500 from grant funds and matching funds for rehabilitation.

(3) *Financial assistance to homebuyers.* The provision of assistance to families to make acquisition and rehabilitation of eligible properties affordable. This may include interest rate reductions ("interest rate buy-downs"), other financing assistance that reduce monthly homebuyer payments, and payment of all or a portion of closing costs, down payments, and other expenses. Acquisition of a property by an eligible family is subject to the limitations under paragraph (b)(2) of this section. Financial assistance may be provided directly to, or on behalf of, an eligible homebuyer.

(4) *Rehabilitation.* (i) Rehabilitation of the eligible property covered by the homeownership program, in accordance with standards established by HUD (see paragraph (b)(2) of this section for applicable cost limitations covering both acquisition and rehabilitation) and section 505(b) for applicable requirements for accessibility for people with disabilities. The property shall be rehabilitated (including the provision of suitable amenities) to a level that makes it marketable for homeownership in the market area to families with incomes at or below 80 percent of the median for the area. HUD encourages applicants to undertake high quality rehabilitation. Luxury items (fixtures, equipment, and landscaping of a type or quality which substantially exceeds that customarily used in the locality for properties of the same general type as the property to be rehabilitated) do not qualify as eligible expenses. The construction of swimming pools is not eligible. The cost to fill in or eliminate a pool from the property and the cost to repair an existing pool are eligible.

(ii) The application shall describe all improvements to be made to, or amenities to be provided for, the property, whether or not they may be funded by use of grant amounts, contributions towards the match required under the program, or other funds. HUD may disapprove improvements or amenities specified in the application it determines are unsuitable for the HOPE program, even if they will be paid for from non-program funds.

(iii) If an applicant proposes to make improvements to an eligible property beyond those that qualify as eligible costs, it shall assure that their entire cost will be covered by funds other than the HOPE grant and any amounts contributed towards the match and that the affordability of the property will not be impaired. No such local funds may count towards the match.

(iv) The rehabilitation shall meet local codes applicable to rehabilitation work in the jurisdiction (but not less than the housing quality standards established under the Section 8 Certificate program), and shall include improvements necessary to meet applicable Federal requirements, and may include energy conservation-related repairs and improvements and the repair or replacement of major systems in danger of failure.

(5) *Administrative Costs.* Administrative costs of the program. The total amount that may be spent on administrative activities from the amount of the grant and any contribution towards the match may not exceed 15 percent of the amount of the grant HUD provides under this notice.

(6) *Counseling and Training.* Counseling and training of homebuyers and homeowners under the homeownership program. This may include such subjects as personal financial management, home maintenance, home repair, construction skills (to the extent appropriate, especially where the eligible family will do some of the rehabilitation), and the general rights and responsibilities of homeownership.

(7) *Relocation.* Relocation of residents who elect to move, in accordance with section 735.

(8) *Temporary Relocation.* Any necessary temporary relocation of residents during rehabilitation, in accordance with section 735.

(9) *Replacement Reserves.* (i) A single replacement reserve for the properties under the program, if necessary to achieve long-term affordability, as provided in section 415(b)(12).

(ii) Assistance for replacement reserves may be drawn down under the grant agreement when needed to assist a homeowner and to fund a reserve account at the time of program close out.

(iii) Where a HOPE 3 application proposes funding of a replacement reserve, it shall describe the escrow or other arrangement that will be used to safeguard the funds (including who will administer the reserve) and the proposed life of the reserve. The application shall demonstrate that the amount proposed for the replacement reserve is reasonable, taking into account (A) the analysis related to determining the affordability of the program, (B) the size of the grant and the amount of matching contributions, (C) the condition and age of the properties and each of their major systems and components (including at least the heating, plumbing and electrical systems and the roof, foundation, windows, exterior walls, and common area, if any (including the need to repaint), and (D) other possible replacement needs. Where the application proposes a replacement reserve, it shall also demonstrate that the financial status of eligible families is insufficient (taking into account insurance requirements and home maintenance repair capability of the family) so there is a need for a

reserve. The replacement reserve may be used only to prevent severe financial hardship to families caused by the failure of a major system or component of the property that renders the unit substandard.

(iv) The entity with fiduciary responsibility for any replacement reserve shall be bonded, in accordance with requirements prescribed or approved by HUD.

(v) Although funding of replacement reserves is an eligible expense under the notice, HUD invites comments on whether a replacement reserve is needed for a single family homeownership program, especially with respect to public and Indian housing transferred for homeownership under the program.

(10) *Legal Fees.* Customary and reasonable costs of professional legal services.

(11) *Ongoing Training Needs.* Defraying costs for the ongoing training needs of the recipient for courses of instruction that are directly related to developing and carrying out the homeownership program.

(12) *Economic Development.* (i) Economic development activities that promote economic self-sufficiency of homebuyers and homeowners under the homeownership program involving only job training or retraining and day care costs of those participating in job training and retraining activities approved under the HOPE 3 program. The recipient shall enter into written agreements with the providers of economic development services specifying the services to be provided, including estimates of the numbers of homebuyers and homeowners to be assisted.

(ii) The aggregate amount of planning and implementation grants that may be used for economic development activities related to any one program may not exceed $250,000.

(13) *Other Activities.* Other activities proposed by the applicant, to the extent the applicant justifies them as necessary for the proposed homeownership program and HUD approves them. For example, the applicant may propose activities related to security needs of the property that are not otherwise covered under other eligible activities, such as under architectural and engineering work and rehabilitation activities.

Section 410. Matching requirements for implementation grants.

(a) *Requirement for Each Recipient to Match the HUD Grant.* Each recipient shall assure that matching contributions equal to not less than 33 percent of the amount of the implementation grant shall be provided from non-Federal sources to carry out the homeownership program. Amounts contributed to the match shall be used for eligible activities or in accordance with this section.

(b) *Form.* Contributions may only be in the form of—

(1) *Cash Contributions.* (i) Cash contributions from non-Federal resources. To be a cash contribution, funds must be contributed permanently for uses under the HOPE 3 program. Funds will be considered permanently contributed if all repayment, interest, and other return on the contribution will only be used for eligible activities in accordance with program requirements.

(ii) Non-Federal resources may not include funds from a Community Development Block Grant made to an entitlement grantee or a State under section 106(b) or section 106(d), respectively, of the Housing and Community Development Act of 1974, except to the extent permitted for administrative expenses under paragraph (a)(2) of this section. Non-Federal resources may not include Federal tax expenditures, comprehensive grants under section 14 of the 1937 Act, or amounts provided to the development from syndication of the low income housing tax credit. (Financing involving the use of the low income housing tax credit is prohibited by section 415(b)(11)(iii).)

(iii) Non-Federal resources may include contribution of trust funds held by Federal agencies for Indian tribes.

(iv) A cash contribution may be made by the applicant, non-Federal public entities, private entities, or individuals. A cash contribution may be made from program income from a Federal grant earned after the end of the award period if no Federal requirements govern the disposition of the program income. Included in this category are repayments from closed out grants under the Urban Development Action Grant Program (24 CFR part 570, subpart G), and the Housing Development Grant Program (24 CFR part 850).

(v) Cash contributions may also be made from sales proceeds from the Turnkey III Homeownership and Mutual Help programs obtained pursuant to PIH Notice 91–28 or an approved homeownership program under section 5(h) of the 1937 Act.

(vi) The grant equivalent of a below-market interest rate loan to the homebuyer, where all repayments, interest, and other return will not be permanently contributed to the HOPE program, may be counted as a cash contribution.

(A) If the loan is made from proceeds of obligations issued by or on behalf of a public body that are exempt from taxation by the United States, the contribution is the present discounted cash value of the difference between payments to be made on the borrowed funds and payments to be received on the loan to the homebuyer, based on a discount rate equal to the interest rate on the borrowed funds.

(B) If the loan is made from funds other than under paragraph (b)(1)(vi)(A) of this section, the contribution is the present discounted cash value of the yield forgone, calculated based on a discount rate approved or prescribed by HUD. In determining the yield forgone, the recipient must use as a measure of a market rate yield one of the following, as appropriate:

(*1*) With respect to housing financed with a fixed interest rate mortgage, a rate equal to the 10-year Treasury note rate plus 200 basis points; or

(*2*) With respect to housing financed with an adjustable interest rate mortgage, a rate equal to the one-year Treasury bill rate plus 250 basis points.

(vii) A down payment by an eligible family may not count towards the match.

(viii) Non-Federal resources may include amounts, determined in accordance with paragraph (b)(1)(vi)(B) of this section, that have been requested by the applicant in an application submitted to the Federal Housing Finance Board for assistance under its affordable housing program, so long as that application is approved before the date HUD approves the HOPE application.

(2) *Administrative Costs.* (i) Contributions for eligible administrative costs may be recognized for matching purposes only up to an amount equal to 7 percent of the amount of the implementation grant. This limitation is in addition to the limitation that the total amount that may be spent on administrative activities from the amount of the grant and any contributions towards the match may not exceed 15 percent of the grant amount (Section 405(b)(4)). If an applicant proposes to contribute administrative costs, HUD will automatically approve an applicant's assurances for matching purposes that it will pay eligible administrative costs from non-Federal sources in an amount up to 7 percent of the implementation grant, and will not require further documentation of those expenditures. If a recipient uses more than 8 percent of its implementation grant to pay for the costs of administration, the amount

credited towards the match will be reduced to less than 7 percent to stay within the 15 percent limitation.

(ii) For example, if the grant amount is $600,000, the recipient must assure the provision of at least $198,000 (33 percent of the grant) from non-Federal sources. Contributions for administrative costs that may be counted towards the match may not exceed $42,000 (7 percent of the grant amount of $600,000). Although an applicant can spend more than this on administrative costs, it may not be counted towards the match. In addition, the applicant must provide contributions covering the remaining $156,000 ($198,000—$42,000) required for the match from non-Federal sources.

(iii) Non-Federal resources, for the purposes of counting contributions for administrative costs, may include funds from a Community Development Block Grant made to an entitlement grantee or a State under section 106(b) or section 106(d) of the 1974 Act and are subject to the recordkeeping and documentation requirements of that program.

(3) *Taxes, Fees, and Other Charges.* The present value of taxes, fees, or other charges that are normally and customarily imposed but are waived, forgone, or deferred in a manner that facilitates the implementation of a homeownership program assisted under this notice. Only amounts of the period after the date a property is acquired by a recipient or other entity for transfer to eligible families; the effective date of the implementation grant agreement if the recipient already owns the property; or the date after an eligible property is acquired directly by an eligible property, as applicable, may be counted towards the match. For example, if a city agrees to forgo real property taxes for 20 years, the application shall compute the estimated tax that would be otherwise payable over the 20 year period, and discount it to present value based on a discount rate approved or prescribed by HUD. Amounts that would be waived, forgone, or deferred for longer than 20 years from the date a family acquires homeownership interests in the unit may not be counted towards the match because enforcement would be impracticable. Where the match includes amounts under paragraph (b)(3) of this section, the documents transferring the homeownership interest to the family shall evidence the contribution, to the extent the contribution has not already been received.

(4) *Land or Other Real Property.* Real property, not acquired with Federal resources, contributed for use under an approved homeownership program.

(i) Where the eligible property is a public or Indian housing development, the value of such a development may not be counted as a contribution towards the match.

(ii) The as-is fair market value of eligible property may be counted as a contribution towards the match, determined in accordance with a recent appraisal conducted under procedures established or approved by HUD. The maximum value contributed shall be limited as provided in §§ 405(b)(2)(ii) and (iii).

(iii) Vacant lots on existing streets with available utilities (which need not include laterals) may be contributed for use under the program, but only if a structure will be moved onto it, the resulting property qualifies as eligible property under the program, and the total amount of the contribution and any amount paid from HOPE 3 funds for the structure and moving costs are within the limits provided in §§ 405(b)(2)(ii) and (iii).

(5) *Infrastructure.* The fair market value of investment, not made with Federal resources, in on-site and off-site infrastructure required for a homeownership program. The infrastructure investment may be counted towards the match only if it was completed no earlier than 12 months before the date of notification by HUD of implementation grant approval. Investment in infrastructure may include such activities as new or repaired utility laterals connecting eligible property to the main line and new or rebuilt walkways, sidewalks, or curbs on or contiguous to the eligible property. If the investment in infrastructure also benefits other properties, only the share of the costs directly benefiting the eligible property under the homeownership program may be counted towards the match.

(6) *Debt Forgiveness.* Where debt on real property to be acquired under the program is forgiven, permitting the property to be acquired for less than fair market value, the savings may count as a match. However, the amount of forgiven debt counted toward the match may not exceed the fair market value of the property and any other applicable limitations determined under §§ 405(b)(2) (ii) and (iii) or paragraph (b)(4) of this section.

(7) *Other In-Kind Contributions.* (i) The reasonable value of in-kind contributions proposed by the applicant in the application and approved by HUD. In reviewing proposed in-kind contributions, HUD shall review to ensure (A) the proposed contribution is to be used for an eligible activity under the proposed homeownership program; (B) the application demonstrates that the proposed in-kind contribution will actually be provided; and (C) the proposed value of the contribution is reasonable. In determining whether the value is reasonable, HUD shall generally consider the amount such work would otherwise cost the program, but may adjust the value, based on special circumstances.

(ii) All donated labor, including sweat equity provided by a homebuyer or homeowner, shall be valued at $10 an hour, except for donated professional labor, as approved by HUD, including work by homebuyers and homeowners. The donated professional labor shall be valued at the fair market value of the work completed. Professional labor is work ordinarily performed by the donor for payment, such as work by laborers, electricians, and architects that is equivalent to work they do in their occupations. Sweat equity may be counted towards the match only if it is not also counted towards a family's equity.

(iii) Donated materials and supplies may be counted towards the match contribution. Materials and supplies need not have been purchased specifically for the program to be included as a match contribution, if the cost of the grantee of the materials and supplies (or, in the case of materials and supplies donated by a different entity than the recipient for use in the program, the fair market value of the materials and supplies) and if the fact that they were used in the program can be documented. The recipient shall maintain a written enumeration of what donated materials and supplies will be used in the program, as well as documentation of their cost or value.

(c) *Other Restrictions.* All contributions towards eligible activities to be counted towards the match shall be provided no later than the deadline for completion of program activities established in accordance with section 705, except that contributions under section 410(b)(3), taxes, fees, and other charges, may be made after the deadline pursuant to a legally binding obligation by the donor.

(d) *Exception for Indian Housing Authorities.* Where the recipient is an IHA and the IHA (acting in that capacity) has not received, and will not receive, amounts under title I of the Housing and Community Development Act of 1974 for the fiscal year in which HUD obligates HOPE grant funds, the match requirements under this section shall not apply.

Section 415. Applications for implementation grants.

(a) *NOFA.* An application for an implementation grant shall be submitted by an applicant in accordance with this notice and the NOFA. The NOFA advises potential applicants how to obtain an application package and establishes deadlines and other requirements for submission of applications. The NOFA also informs each applicant that it may request information and guidance from HUD about program requirements and preparation of the application.

(b) *Application Contents.* Each application shall contain the information required by the application package, which shall include at least the following items.

(1) *Request for HOPE Implementation Grant.* The application shall contain (i) a summary description of the proposed homeownership program; (ii) a description of the personnel necessary to complete the activities; and (iii) the amount of the grant requested for each activity. The amount requested, together with any non-Federal contributions, shall be sufficient to carry out all proposed activities.

(2) *Match Requirements.* (i) The application shall describe and, except with respect to administrative costs, contain commitments for, the resources that are expected to be contributed towards the match required under section 410, and of any other resources that are expected to be made available in support of the homeownership program. Except for administrative costs, acceptable evidence that the contribution will be provided shall be included. For example, if 20 years of tax abatement will be counted towards the match, the chief executive officer or appropriate legislative body of the government should submit a copy of the law or other official action documenting this commitment. Cash or other property contributions (except those related to administrative costs) shall be supported by evidence of a binding commitment by the donor to donate the cash or other property, subject only to approval of the implementation grant and any other necessary conditions approved by HUD.

(ii) If the match requirement does not apply to an IHA in accordance with section 410(d), the application shall contain a certification that the IHA has not received, and will not receive, amounts under title I of the Housing and Community Development Act of 1974 for the fiscal year in which HUD obligates HOPE grant funds.

(3) *Qualifications and Experience of Applicant.* (i) The application shall describe the applicant and contain a statement of its qualifications and experience, including qualifications and experience in providing housing for low-income families.

(ii) Where a public body submits an application in cooperation with a private nonprofit organization, the application shall include a written agreement that delineates their respective roles and responsibilities and identifies the entity that will execute the grant agreement.

(iii) An application from a private nonprofit organization that has applied for tax exempt status under section 501(c) of the Internal Revenue Code of 1986 on or before the date of application may be considered so long as the organization is approved before the effective date of the grant agreement.

(4) *Description of Proposed Homeownership Program.* The application shall describe the proposed homeownership program, demonstrating consistency with all requirements specified in this notice and the application package (see, especially, section 405, Eligible Implementation Grant Activities and part V, Other Requirements). The application shall specify the activities to be carried out, their estimated costs, and a reasonable schedule for carrying out the activities. The schedule shall require completion of program activities under the grant agreement no later than four years from the effective date of the grant agreement. See section 705 for related requirements and provisions permitting HUD to permit a longer deadline for completion of program activities. See section 715 for requirements for the timely transfer of ownership interests to eligible families.

(5) *Plan.*—(i) *Identifying and Selecting Families.* The application shall contain a plan for identifying and selecting eligible families to participate in the homeownership program. The plan shall—

(A) Establish equitable procedures for selection of eligible families. The procedures shall provide for selection only of families that are creditworthy and have the financial capacity to handle the anticipated costs of homeownership.

(B) Except for Indian tribes and IHAs as described in section 505(a)(2), describe activities planned to carry out the applicant's affirmative fair housing marketing responsibilities that apply whenever homeownership opportunities are made available to other than current residents of the property. The plan shall describe the applicant's affirmative fair housing marketing strategy, including specific steps to inform potential applicants and solicit applications from eligible families in the housing market area who are least likely to apply for the program without special outreach.

(C) Require any family determined not to have paid the appropriate amount of tenant contribution under a HUD housing assistance program to resolve any deficiency before being selected for homeownership.

(D) Give a first preference to otherwise qualified residents that legally occupied units on the date the implementation grant application was submitted to HUD and to current residents at the time homeowners are selected. If the unit occupied by a former resident on the date the implementation grant application was submitted to HUD is occupied by a current resident, a vacant unit under the program shall be offered to the former resident at the earliest possible time.

The plan shall also give a first preference, in the case of vacant properties, to otherwise qualified eligible families who reside in public or Indian housing under the 1937 Act. If a unit occupied by a resident on the date the implementation grant application is submitted to HUD is vacant but its resident on the date of application wishes to exercise the preference, the unit shall not be considered vacant for purposes of the preference for families who reside in public or Indian housing. The plan shall also include such measures as may be necessary to inform residents of public and Indian housing developments of their preference, such as informing RMCs, RCs, PHAs, and IHAs or taking other appropriate measures.

The plan shall give a second preference to otherwise qualified eligible families who have completed participation in an economic self-sufficiency program. The following self-sufficiency programs (and any other Federal, State, or local program proposed by the applicant and approved by HUD as equivalent) qualify: Project Self-Sufficiency, Operation Bootstrap, Family Self-Sufficiency, and JOBS.

(E) Require the recipient to promptly notify in writing any rejected applicant family of the grounds for any rejection, or to require the recipient to require another appropriate entity to do so.

(F) Require each eligible family selected for homeownership to certify at the time it acquires an ownership interest in the unit (or enters into a lease or other conditional ownership agreement providing for acquisition of an ownership interest by the family) that it intends to occupy the unit as its principal residence.

(G) Require each eligible family to agree to occupy the property as its principal residence during the 15-year period from the date it acquires ownership interest in the unit (or enters into a lease or other conditional ownership agreement providing for acquisition of an ownership interest by the family), unless the recipient determines that family is required to move outside the market area due to a change in employment or an emergency situation or the family sells its ownership interest. The family may permit others to rent space (such as a basement area or a spare bedroom) in the property occupied by the family as its principal residence.

(H) Require any eligible family that violates the agreement made under paragraph (b)(5)(i)(G) of this section to pay the amount then due under the promissory note.

(I) Describe the composition of the residents and potential eligible families, including family size and income, and racial, ethnic, and gender characteristics, as required by HUD.

(ii) *Providing Relocation.* The application shall describe the proposed relocation activities, in accordance with the requirements of section 735. The plan shall specify the approximate number of families and individuals who are expected to choose to move and the number who will be temporarily relocated during rehabilitation, the estimated costs, the source of funding, the organization that will carry out the relocation if different than the applicant, and other available resources (including, for example, section 8 assistance).

(iii) *Managing Sweat Equity.* Where applicable, the application shall contain a plan for managing the provision of sweat equity by homebuyers and homeowners, including a description of the anticipated scope of the work, schedule of completion, training of homebuyers and homeowners (and training of others donating labor in connection with sweat equity activity), supervision of the work by a licensed general contractor, and a contingency plan if the sweat equity is not fully provided or the schedule is not met.

(iv) *Providing Training and Counseling.* The application shall contain a plan for providing training and counseling for homebuyers and homeowners.

(6) *Eligible Property.* The application shall anticipate selection of at least five properties and contain the following information about the properties expected to be included in the program:

(i) The anticipated types and sizes of properties;

(ii) Whether the applicant expects the properties to be vacant;

(iii) Whether the properties will be owned by the Federal government, PHAs/IHAs, or State or local governments; and

(iv) The anticipated locations of the properties, by specifying particular neighborhoods where activities will be carried out and describing racial and ethnic characteristics of residents of the neighborhoods.

(7) *Housing Quality Standards Plan.* The application shall include a housing quality standards plan describing how the applicant will ensure that—

(i) The unit will be free from any defects that pose a danger of life, health, or safety before transfer of an ownership interest in a unit to an eligible family or execution of a lease with an option to purchase. The recipient shall inspect, or ensure inspection of, each unit to determine it does not pose an imminent threat to the life, health, or safety of residents and that the property has passed recent fire and other applicable safety inspections conducted by appropriate local officials; and

(ii) The unit will, not later than 2 years after the transfer to an eligible family, meet minimum housing standards. The recipient shall inspect, or ensure inspection of, each unit to determine it meets the local housing code or the housing quality standards established by HUD for the Section 8 Certificate program, whichever is higher.

Higher standards may be proposed by the applicant or required by lenders. The applicant shall adopt written rehabilitation standards, which shall be consistent with the housing quality standards plan, but shall not submit them to HUD.

(8) *Replacement Housing.* Where section 18 of the 1937 Act applies, the application shall contain an application under section 18 for the disposition of units in public or Indian housing developments (see sections 110(a) and 601(d)). Applicants that intend to utilize their HOPE 3 grant in conjunction with a section 5(h) or 21 HUD homeownership development shall be required either to submit as part of the HOPE 3 application package a certification of compliance with an existing section 5(h) or 21 replacement housing plan, or a replacement housing plan under section 5(h) or 21. Applicants should consult the HOPE 3 application package to determine whether the proposed homeownership program is subject to, or exempt from, the requirements of section 18 (including the requirement for a replacement housing plan), or whether alternative requirements (including alternative replacement housing plan provisions) are applicable. HOPE assistance may not be used to fund replacement housing.

(9) *Nondisplacement; Participation by Residents.* The application shall contain a certification by the applicant that no person has been or will be displaced from his or her dwelling as a direct result of a homeownership program under this notice. This does not preclude termination of tenancy for violation of the terms of occupancy of a unit. Each resident of an eligible property on the date the application was submitted to HUD and each resident at the time homeowners are selected shall be given an opportunity to become a homeowner under this program if the resident qualifies as an eligible family and meets other program requirements. The use of eligible properties occupied by residents who are not interested in, or do not qualify for, homeownership and who do not elect to move is not permitted.

(10) *Management Entity.* The application shall identify and describe the entity that will operate and manage the property, and contain a copy of the proposed contract, or states that the applicant intends to operate and manage the property. Where homeowners will have full responsibility upon acquiring a homeownership interest in a property (as is expected in scattered site, fee simple ownership arrangements), this requirement will only cover the period, if any, until the homeowners become fully responsible.

(11) *Financing.* (i) The application shall identify and describe the financing proposed for any (A) rehabilitation and (B) acquisition (*1*) of the property, where applicable, by the applicant or other entity, including an RC, for transfer to eligible families, and (*2*) by eligible families of ownership interests in eligible properties.

(ii) Financing may include use of the implementation grant to permit transfer of an ownership interest in a unit to an eligible family for less than fair market value or with assisted financing; sale for cash; or other sources of financing (subject to requirements that apply to such other sources), including conventional mortgage loans, mortgage loans insured under title II of the National Housing Act, and mortgage loans under other available programs, such as VA, FmHA, and RTC seller-assisted financing.

(iii) Financing may not involve use of the low income housing tax credit. No assumptions are permitted. HUD invites comments on whether assumptions should be permitted.

(12) *Affordability*—(i) *Initial Affordability.* (A) The application shall demonstrate that the monthly expenditure for principal, interest, taxes, and insurance by an eligible family that is necessary to complete the sale for the initial acquisition of a unit is not less than 20 percent but not more than 30 percent of the adjusted income of the family, determined in accordance with 24 CFR part 913 (where the recipient is a PHA, RMC, or RC), part 813 (unless the recipient is a PHA, RMC, or RC), or part 905 (for Indian housing developments), as appropriate. HUD may approve a justified request in the application for a floor lower than 20 percent to avoid undue hardship to families, such as where the cost of utilities is high. As required by the statute, closing costs are included in this 30 percent cap to the extent they are included in the costs of principal and interest, or are otherwise required to be paid by the homeowner over time after acquisition. It does not make sense to count closing costs paid as a lump sum at closing for purposes of computing a monthly maximum family expenditure. In setting the sales price for acquisition, the applicant shall take into account the need to comply with this affordability standard.

(B) Applicants are encouraged to consider the additional monthly costs of utilities and other monthly housing costs in determining whether the family can afford to purchase a unit.

(C) Applicants shall adopt written standards for determining monthly expenditures under paragraph (b)(12) of this section, but shall not submit them to HUD.

(ii) *Continued Affordability.* The application shall contain a feasible plan for ensuring continued affordability by homebuyers and homeowners in the eligible property. The plan shall avoid using financing, such as a mortgage that is not fully amortizing (such as a "balloon" mortgage) or that involves negative amortization, that would impair the continued affordability of the property for eligible families.

(13) *Sales Price to Applicant or Other Entity* The application shall specify the estimated average sales price to the recipient for the properties expected to be acquired for homeownership under the program, the basis for the estimate, and terms (if known) to the entity that will purchase properties for resale to eligible families.

(14) *Sales Prices and Terms of Sale to Eligible Families; Form of Ownership.* (i) The application shall contain estimated sales prices and terms of sale to eligible families. The application shall also specify the type or types of homeownership to be used, including cooperative ownership (including limited equity cooperative ownership), fee simple ownership (including condominium ownership), or another form of ownership proposed and justified by the applicant and approved by HUD.

(ii) In order for the homeowner to have a continuing equity interest in the property, the proposed program shall require each eligible family to make an investment in the property, which shall either be in the form of a downpayment paid at closing from family resources or from the proceeds of a loan to the family secured by a mortgage on the property.

(iii) An eligible family may transfer amounts credited to it under other HUD homeownership programs (including Turnkey III and Mutual Help) to meet down payment obligations under the HOPE program, if it is purchasing the same unit it has occupied under the other HUD homeownership program. An applicant may permit a family to meet its down payment obligation, if any, through "sweat equity."

(iv) See 110(f) for provisions governing the use of single family FHA mortgage insurance.

(15) *Resale Restrictions, If Any.* The application shall contain any proposed restrictions on the resale of units by initial or subsequent homeowners under the homeownership program (Section 720(a)(1)(ii)). The required restrictions set forth in 720 need not be restated.

(16) *CHAS Certification.* (i) The application shall contain certification by the public official, or his or her authorized representative, who submits the CHAS that the proposed activities are consistent with the approved CHAS of the State or unit of general local government within which the eligible property is located. Where the program will be carried out in more than one unit of general local government with a CHAS, a certification from each shall be included.

(ii) Paragraph (b)(16)(i) of this section shall not apply to an application submitted by an Indian tribe or IHA. Indian tribes and IHAs are not included in the definition of a "jurisdiction," the entity charged with submitting a CHAS. HUD has concluded that Indian tribes and IHAs need not submit a CHAS and need not submit a certification of consistency with a housing strategy.

(17) *Equal Opportunity Certifications.* (i) The application shall contain—

(A) A certification that the applicant will comply with the requirements of the Fair Housing Act, title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973; and the Age Discrimination Act of 1975, and will affirmatively further fair housing; or

(B) In the case of an application from an Indian tribe or IHA, under the circumstances described in Section 505(a)(2) of this notice, a certification that the applicant will comply with the Indian Civil Rights Act (25 U.S.C. 1301 *et seq.*), section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975.

(ii) The application shall contain a statement from the applicant (A) whether or not a desegregation order, agreement, or plan that applies to the applicant is in effect or known to the applicant to be under consideration; (B) that the applicant is not in violation of any existing desegregation order, compliance agreement, or voluntary agreement, or a statement describing the circumstances of the violation; and (C) describing any potential impact the proposed homeownership program may have on implementing any existing or pending order, agreement, or plan.

(18) *Plan for Use of Certain Sales Proceeds.* The application shall contain a plan for use of proceeds from sales to eligible families and amounts families may not retain upon resale. The plan shall provide for uncommitted sales proceeds and resale proceeds that may not be retained by a homebuyer to be spent before additional grant amounts are drawn down by the recipient.

(19) *Economic Development.* The application may contain a plan for economic development activities under the program. The application shall demonstrate that the proposed activities under § 405(b)(12)(i) are directly related to the proposed homeownership program, and describe how these activities will promote the self-sufficiency of homebuyers and homeowners.

(20) *Environmental Certification.* The application shall contain a certification that the applicant agrees to comply with the environmental laws and authorities at 24 CFR 50.4 and that it will (i) supply HUD with information necessary for it to perform any necessary environmental review of each property; (ii) carry out mitigating measures required by HUD or select alternate eligible property; and (iii) not acquire or otherwise carry out any program activities with respect to any eligible property until HUD approval is received. See Section 745.

(21) *Nonduplication of Funding.* The application shall contain a certification that the applicant is not and will not receive assistance from the Federal government, a State, or a unit of general local government, or any agency or instrumentality thereof, for activities for which funding is requested in the application.

(c) *Screening.* (1) HUD shall screen each application submitted on or before the deadline set forth in the NOFA to determine whether it is complete, is internally consistent, and contains correct computations. Where HUD determines an application is deficient in one or more of these areas, it shall notify the applicant in writing and give it an opportunity to correct the deficiencies in its application. However, the applicant may not substantially revise the application, such as by substituting another neighborhood or applicant or changing other fundamental features of the homeownership program, because that would not be fair to other applicants. The notification shall inform each applicant that it may request information and guidance from HUD about program requirements and preparation of the application. The notification shall also require applicants to submit additional or corrected material so it is received in the appropriate HUD office no later than close-of-business on the 14th calendar day after the date of notification to the applicant giving it an opportunity to modify its application. HUD may not extend this deadline for actual receipt of the material for any reason. HUD shall not consider further any applications that do not meet one of the tests in the first sentence of paragraph (c)(1) of this section, after the opportunity, if any, to submit additional or corrected material, or fail to comply with other program requirements.

(2) The purpose of this procedure is to increase the number of approvable applications so viable homeownership opportunities may be developed at the earliest possible time, while giving each applicant an equal opportunity to receive HUD assistance and correct deficiencies. HUD anticipates that many applicants will be relatively new and may need this additional opportunity to perfect their applications.

(Approved by the Office of Management and Budget under control number 2506–0119)

Section 420. Threshold Review

HUD shall review each application that qualifies for additional consideration under the screening procedures in section 415(c). HUD shall not consider further any application that fails to meet any one of the following additional threshold criteria—

(a) *Experience and Capacity of Applicant.* (1) The applicant or other specified entity has the administrative capacity, or proposes to obtain administrative capacity, that is adequate to carry out the proposed program.

(2) The application demonstrates that the applicant or other specified entity has adequate internal management controls, including strong systems for financial management and cost controls, as evidenced by submission of a summary of the last certified independent audit report or a certification from a certified public accountant who has examined the current internal management controls or is establishing those systems for a new entity.

(3) If the applicant or its key staff and other specified entity and its key staff have previous experience in housing acquisition, rehabilitation, or a homeownership program, their efforts have been free of serious problems and major audit findings or problems and findings have been satisfactorily resolved.

(b) *Feasibility of the Homeownership Program.* (1) The application sets forth a realistic schedule for implementing the proposed program, including timely acquisition and, where applicable, timely rehabilitation of properties, as well as timely property transfer to homebuyers. The schedule shall provide for completion of implementation within four years from the effective date of the grant agreement, except where a longer period is approved in accordance with § 705.

(2)(i) At least five potentially suitable eligible properties are available in the areas in which the applicant proposes to carry out the program.

(ii) The proposed program does not result in appreciably reducing in the locality the number of affordable rental housing units of the type to be assisted that would be available to residents currently residing in the types of properties proposed for use under the program or to families who would be eligible to reside in the properties. In the case of scattered site, single family public or Indian housing, where section 18 of the 1937 Act applies (see section 110(a)), this requirements is met automatically since section 18 of the 1937 Act requires replacement of each unit transferred to homeownership. HUD shall determine that the application complies with this criterion if it determines that no more than 10 percent of the affordable single family (one- to four units) rental housing units in the market area would be converted to homeownership as a result of approval of the application. If the proposed homeownership program is in a market area that contains such a small number of affordable rental housing units that the applicant believes the number of units included in its application may exceed the 10 percent threshold, the applicant shall submit whatever documentation it believes appropriate to assist HUD in making this determination.

(3) The proposed financing from all sources is sufficient to accomplish the program's objectives.

(4) The application demonstrates that the affordability standards in section 415(b)(12) can be met and the plan for ensuring continued affordability in section 415(b)(12)(ii) is feasible. The plan shall take into account the proposed cost of operating and maintaining the property after eligible families become homeowners and the adequacy of counseling and training of homebuyers, residents, and homeowners.

(5) Adequate supportive homeownership counseling services will be provided.

(6) If applicable, the application provides for necessary relocation assistance.

(7) The plan in section 415(b)(5)(i) for identifying and selecting eligible families to participate is acceptable.

(8) The housing quality standards plan in section 415(b)(7) is acceptable.

(9) The proposed program provides that all units in properties assisted under the program will be acquired by eligible families.

(10) The application complies with all other applicable requirements and proposes a homeownership program that is feasible, given the scope and location of the program and the administrative capacity of the applicant.

(c) *Equal Opportunity and Related Requirements.* The applicant's certification of compliance with equal opportunity and related requirements and its statement concerning desegregation orders, compliance agreements, and voluntary agreements are consistent with facts known to HUD, and the performance of the applicant is satisfactory or any problems are being satisfactorily resolved.

Section 425. Rating, ranking, and selection of applications

(a) *Rating.* If the regional allocation is not sufficient to fund each application that HUD determines meets the threshold requirements, HUD shall review each such application and assign it points in accordance with the following selection criteria—

(1) *Capability.* The ability of the applicant to develop and carry out the proposed homeownership program in a reasonable time and in a successful manner. In assigning points for this

criterion, HUD shall consider evidence in the application demonstrating—

(i) The capability of the applicant to handle financial resources, demonstrated through such evidence as previous experience of the applicant or key staff and existing financial control procedures, or by an explanation of how such capability will be obtained—10 points;

(ii) The capability of the applicant to manage the proposed homeownership program as a whole, demonstrated through previous experience of the applicant or key staff in managing acquisition, rehabilitation, construction, real estate financing, counseling and training, or other relevant activities or by an explanation of how such capability will be obtained—10 points.

Maximum points for this criterion (1): 20 points.

(2) *Local Support.* In assigning points for this criterion, HUD shall consider—

(i) The extent of commitment of the unit of general local government (or Indian tribe, where applicable) and the PHA/IHA (where it is not part of the unit of general local government or Indian tribe and where units in public or Indian housing developments are expected to be used under the program) in support of the program, such as the provision of social services (including counseling and training), rehabilitation loans or grants, interest rate subsidies, water and sewer improvements, street and sidewalk improvements, and tax abatements—7 points.

(ii) The extent of commitment of the local community (including places of worship, banks, neighborhood or community organizations or other community groups) in support of the program, such as the donation of labor or materials, interest rate reductions or other financing subsidies, and commitment of volunteer assistance in some aspect of the program (activities of the applicant shall not be considered under this subcriterion (ii))—7 points.

Maximum points for this criterion (2): 14 points.

(3) *Quality* In assigning points for this criterion, HUD shall consider—

(i) The quality of the applicant's efforts to maintain long-term affordability, taking into account such program features as long-term financing at reasonable terms, energy conservation, and improvements that will require low-cost maintenance—5 points; and

(ii) The extent to which the plan provides for high quality supportive services to homebuyers and homeowners, such as pre- and post-homeownership counseling—5 points.

Maximum points for this criterion (3): 10 points.

(4) *Relationship to CHAS.* Whether the approved CHAS for the jurisdiction or jurisdictions within which the homeownership program is to be carried out includes homeownership as one of the general priorities identified pursuant to section 105(b)(7) of NAHA.

This criterion shall not be used to rate an application submitted by an Indian tribe or IHA. The maximum score for such an application will be 95. The percentage of points earned by an applicant, based on its maximum points local of 95, will be multiplied by the maximum number of points for other applicants (100) to determine the points for purposes of ranking.

Points for this criterion (4): 5 points.

(5) *Efficiency* In assigning points for this criterion, HUD shall consider the cost-effectiveness in using Federal grant funds, determined by dividing the requested amount of the grant (adjusted by the R.S. Means Cost Construction Index, where appropriate) by the total number of units expected to be assisted.

Maximum points for this criterion (5): 15 points.

(6) *MBE/WBE Goals.* (i) The extent to which the applicant demonstrates a firm commitment to promoting the use of minority business enterprises and women-owned businesses, especially resident-owned businesses. For example, the applicant has used such businesses in the past, has set forth specific affirmative steps it will take to ensure that such businesses have an equal opportunity to obtain and compete for contracts, or both. These steps may include the steps outlined at 24 CFR 85.36(e) and 570.506(g)(6), but may not include awarding contracts solely or in part on the basis of race or gender. See section 505(d) for the legal basis for this criterion.

(ii) In the case of applications submitted by Indian tribes or IHAs, the requirements of the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450e(b), apply. Accordingly, for such applicants, points for this factor shall be assigned based on the extent to which the applicant demonstrates a firm commitment to promoting the use of minority business enterprises and women-owned businesses, to the maximum extent consistent with, but not in derogation of, the Indian Self-Determination and Education Assistance Act.

Maximum points for this criterion (6)(i) or (ii), as applicable: 5 points.

(7) *Inventory* In assigning points for this criterion, HUD shall consider—

(i) The extent to which the proposal will emphasize the use of eligible Federal properties, public or Indian housing, or both—3 points; and

(ii) The extent of the applicant's commitment to use vacant units, as described in the applicant's homeownership program plan—8 points. This subcriterion shall not be used to rate an application where use of scattered site single family public or Indian housing is proposed for more than half of the units under the program. The maximum score for such an application will be 92. The percentage of points earned by an applicant, based on its maximum point total of 92, will be multiplied by the maximum number of points for other applicants (100) to determine the points for purposes of ranking. For example, if an application receives 46 out of 92 points, or 50 percent, it will be ranked as if it had earned 50 points (50 percent of 100 points), not 46 points.

Maximum points for this criterion (7): 11 points.

(8) *Need.* In assigning points for this criterion, HUD shall consider the percentage of the number of rental households in the jurisdiction or jurisdictions in which the program will be carried out that are living in poverty as defined by the Bureau of the Census.

Maximum points for this criterion (8): 15 points.

(9) *Fair Housing Choice.* The degree to which the applicant's proposal furthers fair housing choice through its affirmative marketing strategy, the proposed areas in which eligible properties are located, or a combination of these factors.

This criterion shall not be used to rate an application submitted by an Indian tribe or IHA, when those entities are covered by the Indian Civil Rights Act. Section 505(a)(2) explains the circumstances under which the Indian Civil Rights Act applies. The maximum score for such an application will be 95. The percentage of points earned by an applicant, based on its maximum point total of 95, will be multiplied by the maximum number of points for other applicants (100) to determine the points for purposes of ranking.

Maximum points for this criterion (9): 5 points. Maximum total points: 100 points.

(b) *Ranking and Selection.* (1) After assigning points to each application under paragraph (a) of this section, HUD shall review and may adjust the ratings to ensure consistency among Field and Regional Office scores. HUD shall then rank the applications in order, by HUD Region. HUD shall select the highest ranking applications within each Region.

(2) If two or more applications in a Region receive the same number of points and sufficient amounts are not available to fund all such applications, the application or applications requesting the smallest grants shall be selected if a sufficient amount remains to fund them. If two or more tied applications request the same amount and sufficient funds are not available to fund all such applications, the following system will be used:

(i) If the tied applications are for programs to be carried out in different jurisdictions, the one(s) with the highest number of points for Need (criterion (8)) shall be selected, using whatever remaining funds are available.

(ii) If the tied applications are to be carried out in the same jurisdiction, the one(s) with the highest number of points for Efficiency (criterion (5)) shall be selected, using whatever remaining funds are available. If any amounts remain after applying these procedures, they shall be reallocated in accordance with paragraph (e) of this section.

(3) Procedural errors discovered after initial ratings but before notification of applicants shall be corrected and rankings revised. Procedural errors discovered after notification of approved applicants which, if corrected, would result in approval of an application which was not approved will be corrected by funding that application from any unused amounts or "off the top" from amounts available for implementation grants in the next funding round.

(c) *Reduction in Requested Grant Amounts.* HUD shall approve an application for an amount lower than the amount requested or adjust line items in the proposed budget within the amount requested (or both) if it determines the amount requested for one or more eligible activities is unreasonable or unnecessary or does not otherwise meet applicable cost limitations established for the program. In addition, HUD may approve an application for a lower amount if it determines (1) there is an insufficient inventory of potential eligible properties; (2) the application sets unrealistic program goals; (3) the applicant lacks adequate past experience or otherwise is not able to carry out as large a program as requested; (4) the applicant has requested an ineligible activity; (5) the applicant has proposed an inadequate match; or (6) insufficient amounts remain in that funding round to fund the full amount requested in the application.

(d) *Notification of Approval or Disapproval.* After completion of the ranking and selection of applications, but no later than six months after the date of submission of the application, HUD shall notify the selected applicants and the applicants that have not been selected, in writing. The amount of the required match may be adjusted when HUD approves an application, to reflect the approved grant amount. HUD will cancel approval of the application if commitments for replacement housing are not provided in a reasonable period of time.

(e) *Insufficient Approvable Applications; Reallocation.* (1) If funds remain after HUD approves all approvable applications in a Region, the remaining amounts from each Region may be combined and HUD may reallocate to Regions having more applications meeting threshold requirements than can be funded from the initial allocation for that Region. Amounts that become available due to deobligation of grant amounts may also be reallocated. Where HUD reallocates funds under paragraph (e)(1) of this section, HUD shall reallocate funds using the same factors as used for the original allocation. If amounts remain after applying these procedures, they may be made available to fund the highest ranked, unfunded planning grant applications or made available under a NOFA inviting additional applications.

(2) As an alternative to the procedures in paragraph (e)(1) of this section, if funds remain after HUD approves all approvable applications in a Region, the remaining amounts from each Region may be made available to fund the highest ranked, unfunded planning grant applications or made available under a NOFA inviting additional applications.

V. Other Requirements

Section 501 Flood Insurance and Coastal Barriers Resources Act

(a) *Flood Insurance.* Pursuant to the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128), the recipient may not provide financial assistance for acquisition or rehabilitation of properties located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless—.

(1) The community in which the area is situated is participating in the National Flood Insurance program (see 44 CFR parts 59 through 79), or less than one year has passed since FEMA notification regarding such hazards; and

(2) Flood insurance is obtained as a condition of the acquisition or rehabilitation of the property.

(b) *Coastal Barriers Resources Act.* Pursuant to the Coastal Barrier Resources Act (16 U S.C. 3601), HUD will not approve use of properties in the Coastal Barrier Resources System.

Section 505. Nondiscrimination and Equal Opportunity

(a) *Fair Housing Requirements.* (1) The requirements of the Fair Housing Act (42 U.S.C. 3601–19) and implementing regulations at 24 CFR part 100, part 109, and part 110; Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1958–1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307) (Equal Opportunity in Housing) and implementing regulations at 24 CFR part 107; and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) (Nondiscrimination in Federally Assisted Programs) and implementing regulations issued at 24 CFR part 1 shall apply.

(2) The Indian Civil Rights Act (25 U.S.C. 1301 *et seq.*) applies to tribes when they exercise their powers of self-government. Thus, it is applicable in all cases when an IHA has been established by exercise of such powers. In the case of an IHA established pursuant to State law, the applicability of the Indian Civil Rights Act shall be determined on a case-by-case basis. Developments subject to the Indian Civil Rights Act shall be developed and operated in compliance with its provisions and all implementing HUD requirements, instead of title VI and the Fair Housing Act and their implementing regulations.

(b) *Discrimination on the Basis of Age or Handicap.*

The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–07) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8 shall apply.

(c) *Employment Opportunities.* (1) The requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U S.C. 1701u) (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects) shall apply. In addition, Executive Order 11246 (3 CFR 1964–1965 Comp., p. 339) (Equal Employment Opportunity) and implementing regulations at 41 CFR part 60 shall apply.

(2) In the case of Indian tribes and IHAs, the requirements of the Indian Self-Determination and Education Assistance Act shall also apply (see 25 U.S.C. 450e(b); 24 CFR 905.165 (a) and (b) and 905.360); compliance with Executive Order 11246 and 41 CFR part

60 shall be to the maximum extent consistent with, but not in derogation of, the Indian Self-Determination and Education Assistance Act (see 24 CFR 905.170(b) and 905.360).

(d) *Minority and Women's Business Enterprises.* The requirements of Executive Orders 11625, 12432, and 12138 shall apply. Consistent with HUD's responsibilities under these Orders, recipients must make efforts to encourage the use of minority and women's business enterprises in connection with funded activities. In the case of applications submitted by Indian tribes or IHAs, recipients' efforts must be consistent with, but not in derogation of, the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450e(b).

(e) *Affirmative Fair Housing Marketing.* The recipient shall adopt a plan for informing and soliciting applications from people who are least likely to apply for the program without special outreach, consistent with the affirmative fair housing marketing requirements. See 24 CFR part 108. This paragraph shall not apply to Indian tribes and IHAs, as described in paragraph (a)(2) of this section.

(f) *Authority for Collection of Racial, Ethnic, and Gender Data.* HUD requires submission of racial, ethnic, and gender data under this notice pursuant to section 562 of the Housing and Community Development Act of 1987 and section 808(e)(6) of the Fair Housing Act.

Section 510. OMB Circulars

(a) The policies, guidelines, and requirements of OMB Circular Nos. A–87 (Cost Principles Applicable to Grants, Contracts and Other Agreements with State and Local Governments) and 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments) apply to the award, acceptance, and use of assistance under the program by governmental entities, and to the remedies for non-compliance, except where inconsistent with the provisions of NAHA, other Federal statutes, or this notice. Circular Nos. A–110 (Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations) and A–122 (Cost Principles Applicable to Grants, Contracts and Other Agreements with Nonprofit Institutions) apply to the acceptance and use of assistance by private nonprofit organizations, except where inconsistent with the provisions of NAHA, other federal statutes, or this notice. Recipients are also subject to the audit requirements of OMB Circular A–128 implemented at 24 CFR part 44, and OMB Circular A–133 (Audits of Institutions of Higher Learning and Other Nonprofit Institutions).

(b) Copies of OMB Circulars may be obtained from E.O.P. Publications, room 2200, New Executive Office Building, Washington, DC 20503, telephone (202) 395–7332 (this is not a toll-free number). There is a limit of two free copies.

Section 515. Drug-Free Workplace

Applicants shall certify that they will provide a drug-free workplace, in accordance with the Drug-free Workplace Act of 1988 and HUD's implementing regulations at 24 CFR part 24, subpart F.

Section 520. Anti-Lobbying Certification

(a) Section 319 of Public Law 101–121 prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government. A government-wide common rule governing the restrictions on lobbying was published as an interim rule on February 26, 1990 (55 FR 6736) and supplemented by a notice published June 15, 1990 (55 FR 24540). For HUD, this rule is found at 24 CFR part 87. The rule requires applicants for and recipients of assistance exceeding $100,000 to certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance. The rule also requires disclosures from applicants and recipients if nonappropriated funds have been spent or committed for lobbying activities if those activities would be prohibited if paid with appropriated funds. The law provides substantial monetary penalties for failure to file the required certification or disclosure.

(b) This section shall not apply to Indian tribes or IHAs. Indian tribes, tribal organizations, or any other Indian organization with respect to expenditures specifically permitted by other Federal law are not covered by the definition of "person" in 24 CFR part 87.

Section 525. Debarred or Suspended Contractors

The provisions of 24 CFR part 24 apply to the employment, engagement of services, awarding of contracts, subgrants, or funding of any recipients, or contractors or subcontractors, during any period of debarment, suspension, or placement in ineligibility status.

Section 530. Conflict of Interest

(a) In addition to the conflict of interest requirements in OMB Circular A–110 [2] and 24 CFR part 85, no person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient and who exercises or has exercised any functions or responsibilities with respect to assisted activities, or who is in a position to participate in a decisionmaking process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter, except that a resident of an eligible property may acquire an ownership interest.

(b) HUD may grant an exception to the exclusion in paragraph (a) of this section on a case-by-case basis when it determines that such an exception will serve to further the purposes of the HOPE program and the effective and efficient administration of the local homeownership program. An exception may be considered only after the applicant or recipient has provided a disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made and an opinion of the applicant's or recipient's attorney that the interest for which the exception is sought would not violate State or local laws. In determining whether to grant a requested exception, HUD shall consider the cumulative effect of the following factors, where applicable:

(1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the local homeownership program that would otherwise not be available;

(2) Whether an opportunity was provided for open competitive bidding or negotiation;

(3) Whether the person affected is a member of a group or class intended to be the beneficiaries of the activity and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(4) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decisionmaking process, with respect to the specific activity in question;

(5) Whether the interest or benefit was present before the affected person

[2] See 510(b) concerning the availability of OMB Circulars.

was in a position as described in paragraph (b) of this section;

(6) Whether undue hardship will result either to the applicant, recipient, or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(7) Any other relevant considerations.

Section 535. Labor Standards

If other Federal programs are used in connection with the HOPE 3 homeownership program, labor standards requirements apply to the extent required by such other Federal programs. For example, if CDBG funds are used for rehabilitation, CDBG labor standards requirements will not apply because HOPE 3 properties may not contain 8 or more units. See 24 CFR 570.603.

Section 540. Lead-Based Paint Testing and Abatement

Any residential property assisted under the HOPE program established under this notice constitutes HUD-associated housing for the purpose of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, *et seq.*) and is, therefore, subject to 24 CFR part 35. Unless otherwise provided, recipients shall be responsible for testing and abatement activities.

Section 545. Requirements Applicable to Religious Organizations

Where the applicant is, or proposes to contract with, a primarily religious organization, or a wholly secular organization established by a primarily religious organization, to provide, manage, or operate housing under the program, the organization shall undertake its responsibilities under the homeownership program in accordance with the following principles:

(a) It will not discriminate against any employee or applicant for employment under the program on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;

(b) It will not discriminate against any person applying for housing on the basis of religion and will not limit such housing or give preference to persons on the basis of religion;

(c) It will provide no religious instruction or counseling, conduct no religious services or worship (which term does not include voluntary, non-denominational prayer before meetings), engage in no religious proselytizing, and exert no other religious influence in the provision of assistance under the homeownership program.

VI. Grant Agreement

Section 601. Grant Agreement

After HUD approves an application for a planning grant or an implementation grant, it shall enter into a grant agreement with the recipient setting forth the amount of the grant and applicable terms and conditions, including sanctions for violation of the agreement. Among other things, the grant agreement shall provide that the recipient agrees:

(a) To carry out the program in accordance with the provisions of this notice, applicable law, the approved application, and all other applicable requirements;

(b) To comply with such other terms and conditions including recordkeeping and reports, as HUD may establish for the purposes of administering, monitoring, and evaluating the program in an effective and efficient manner;

(c) To obtain HUD approval under applicable environmental requirements before acquiring any property;

(d) That no amounts may be drawn down under the grant agreement with respect to units in a public or Indian housing development until HUD approves an application under section 18 of the 1937 Act and implementing regulations, or approves a homeownership application for conversion to the Turnkey III or Mutual Help program, or a homeownership application for, or request for conversion to, section 5(h) or section 21 of the 1937 Act;

(e) That HUD will terminate the grant agreement if commitments for replacement housing are not provided in a reasonable period of time; and

(f) That HUD may withhold, withdraw, or recapture any portion of a grant, terminate the grant agreement, or take other appropriate action authorized under the grant agreement, if HUD determines that the recipient is failing to carry out the approved homeownership program in accordance with the terms of the approved application and this notice, including failure to provide the contributions toward the match. Failure to provide at least 70 percent of the number of homeownership opportunities proposed in the application may result in remedial actions being taken by HUD, including requiring repayment of all or part of the grant.

VII. Implementation

Section 701. Implementation; Performance Standards

(a) After execution of its implementation grant agreement, the recipient shall carry out the planning grant or implementation grant activities in accordance with its approved application. HUD shall establish procedures governing the drawdown of funds under grant agreements, pursuant to section 740.

(b) HUD intends to establish performance criteria in the final rule for the program and invites comments on what the standards should be.

Section 705. Deadline for Completion of Program Activities

A recipient shall spend all implementation grant amounts within four years from the effective date of the grant agreement. An applicant may propose in its application a longer period for completion of activities, together with a justification. After application approval, HUD may approve a request to extend the deadline for the completion of eligible activities, where it determines it is necessary.

Section 710. Social Security Numbers

As a condition of eligibility for homeownership under this notice—

(a) At the time a family applies for homeownership, the recipient (or other appropriate entity) shall require the family to meet the requirements for the disclosure and verification of social security numbers, as provided by 24 CFR part 750; and

(b) The recipient (or other appropriate entity) shall require the family to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 760.

Section 715. Timely Homeownership

(a) *Deadline for Transfer.* Recipients shall transfer ownership interests in the property to eligible families within a reasonable period of time.

(b) *Definition of Reasonable Period of Time.* (1) Except for eligible property already owned by the entity that will transfer ownership interests to eligible families, all eligible properties, including *in rem* property, shall be acquired within one year of the effective date of the implementation grant agreement. All properties shall be transferred to eligible families within two years of the effective date of the grant agreement. The transfer shall involve (i) acquisition by an eligible family of an ownership interest in the property, or (ii) a lease providing for purchase by the family or other type of conditional ownership agreement providing for transfer of ownership interest to the family within two years of the date of execution of the lease.

(2) An applicant may propose in its application a longer period for transferring ownership interests to eligible families, and submit a justification. After application approval, HUD may approve a request for a longer deadline for transfer to eligible families, where it determines it is necessary.

Section 720. Restrictions on Resale by Initial Homeowners

(a) *In general*—(1) *Transfer Permitted.* (i) A homeowner may transfer the homeowner's ownership interest in the unit, subject only to the right to purchase under paragraph (a)(2) of this section, the requirement for the purchaser to execute a promissory note, if required under paragraph (b) of this section, and the limitation on the amount of sales proceeds a family may retain upon sale within the first six years, as required under paragraph (c) of this section. See paragraphs (b) and (c) of this section for the rules for determining the amount homeowners may retain from the sales proceeds.

(ii) Notwithstanding paragraph (a)(1)(i) of this section, an applicant may propose in its application, and HUD may approve based on a review of the individual circumstances, additional reasonable restrictions on the resale of units under the program.

(2) *Right to purchase.* (i) Where an RMC, RC, or cooperative has jurisdiction over the unit, it shall have the prior right to purchase the ownership interest in the unit from the initial homeowner for the amount specified in a firm contract between the homeowner and a prospective buyer. The RMC, RC, or cooperative association shall have 10 days after receiving notice of the firm contract to decide whether to exercise its right and 60 additional days to complete closing of the purchase.

(ii) If no RMC, RC, or cooperative has jurisdiction over the unit or no such entity elects to purchase from the initial homeowner and if the prospective buyer is not a low-income family, a PHA/IHA with jurisdiction for the area in which the unit is located or the recipient, as specified in writing at the time the family acquires ownership interest in the unit, shall have the prior right to purchase the ownership interest in the unit for the amount specified in the firm contract. The PHA/IHA or recipient shall have 10 days after receiving notice of the firm contract to decide whether to exercise its right and 60 additional days to complete closing of the purchase.

(iii) Where an RMC, RC, cooperative, PHA/IHA, or recipient exercises a right to purchase, it shall resell the unit to an eligible family promptly. If the PHA/IHA exercises a right to purchase shares representing a unit in a cooperative, because the cooperative did not have sufficient money to do so, the PHA/IHA shall give the cooperative another chance to purchase the shares before selling them to an eligible family.

(b) *Promissory Note.* (1)(i) At closing, the initial homeowner shall execute a nonamortizing, nonrecourse, non-interest-bearing promissory note, in a form acceptable to HUD, equal to the difference, if any, between the fair market value of the unit and the purchase price, payable to the PHA/IHA, recipient, or other entity designated in the approved homeownership plan, together with a mortgage securing the obligation of the note. In determining the amount of the promissory note and for that purpose only, the purchase price shall be adjusted by deducting all substantial amounts of assistance that would result in an undue profit to the family if it were to sell the property at the beginning of the 7th year of homeownership. (See paragraph (c) of this section for restrictions during the first six years.) For example, if the family received down payment assistance equal to 10 percent or more of the fair market value, a promissory note shall be required.

(ii)(A) With respect to a sale by an initial homeowner, the note shall require payment upon sale by the initial homeowner, to the extent proceeds of the sale remain after paying off other outstanding debt secured by the property that was incurred for the purpose of acquisition or property improvement, paying any other amounts due in connection with the sale (such as closing costs and transfer taxes), and paying the family the amount of its equity in the property, computed in accordance with paragraph (c) of this section.

(B) With respect to a sale by an initial homeowner after the first six years after acquisition, through the 20th year, the amount payable under the note shall be reduced by 1/168 of the original principal amount of the note for each full month of ownership by the family after the end of the sixth year. The homeowner may retain all other proceeds of the sale.

(C) For example, if the family sells at the end of the 13th year of homeownership (at the half-way point between the end of the sixth year and the end of the 20th year of ownership), 84/168 (or one-half) of the note would be forgiven, and only half of the principal amount of the note would be payable from sales proceeds. The family could retain all remaining proceeds, including proceeds due to normal market value increases in the value of the property. If the initial homeowner retains ownership for 20 or more years, the entire amount of the note would be forgiven.

(2)(i) Where a subsequent purchaser during the 20-year period, measured by the term of the initial promissory note, purchases the property for less than the then current fair market value, the purchaser shall also execute at closing such a promissory note and mortgage, for the amount of the discount (but no more than the amount payable at the time of the sale on the promissory note by the seller). The term of the promissory note shall be the period remaining of the original 20-year period. The note shall require payment upon sale by the subsequent homeowner, to the extent proceeds of the sale remain after covering costs of the sale, paying off other outstanding debt secured by the property that was incurred for the purpose of acquisition or property improvement, and paying any other amounts due in connection with the sale. The amount payable on the note shall be reduced by a percentage of the original principal amount of the note for each full month of ownership by the subsequent homeowner. The percentage shall be computed by determining the percentage of the term of the promissory note the homeowner has owned the property. The remainder may be retained by the subsequent homeowner selling the property.

(ii) For example, if the subsequent homeowner acquires the property from an initial homeowner at the end of year 4, there are 192 months (16 years $\times$ 12) remaining in the 20-year period. The term of the promissory note is 16 years. If the subsequent homeowner sells at the end of year 10, having owned the property for 72 months (6 years $\times$ 12), 72/192 (37.5 percent) of the note would be forgiven, and 62.5 percent of the principal amount of the note would be payable from sales proceeds. The family could retain all remaining proceeds, including proceeds due to normal market value increases in the value of the property. If the subsequent homeowner retains ownership to the end of the initial 20-year period (for 16 years, in the example), the entire amount of the note would be forgiven.

(c) *Limitation on Equity Interest an Initial Homeowner May Retain from Sale During First Six Years.* (1) The HOPE program is designed to assure that an initial or subsequent homeowner does not receive any undue profit from acquiring a unit under the program and that, to the extent the sales price is sufficient, an initial homeowner recovers the equity interest in the property. With respect to any sale by an

initial homeowner during the first six years after acquisition, the family may retain only the amount computed under paragraph (c) of this section. Any excess shall be distributed as provided in paragraph (d) of this section. The amount of equity an initial homeowner has in the property is determined by computing the sum of the following—

(i) The contribution to equity paid by the family (such as any down payment (in the form of cash or the value of sweat equity) and any amount paid towards principal on a mortgage loan during the period of ownership);

(ii) The value of any improvements installed at the expense of the family during the family's tenure as owner (including improvements made through sweat equity), as determined by the recipient or other entity specified in the approved application based on evidence of amounts spent on the improvements, including the cost of material and labor; and

(iii) The appreciated value, determined by applying the Consumer Price Index (Urban Consumers) against the contribution to equity under paragraphs (c)(1) (i) and (ii) of this section.

(2) The recipient (or other entity) may, at the time of initial sale, enter into an agreement with the family to set a maximum amount which this appreciation may not exceed.

(3) Amounts that count towards a family's equity may not also count towards the match.

(d) *Use of Amounts a Family May Not Retain.* Fifty percent of any portion of the net sales proceeds that may not be retained by the homeowner under paragraphs (a)(1)(ii), (b), and (c) of this section shall be paid to the entity that transferred ownership interests in units to eligible families, or another entity specified in the approved application, for use for improvements to properties under the program, business opportunities for low-income families, supportive services related to the homeownership program, additional homeownership opportunities, and other activities approved by HUD in the approved homeownership program or later. The remaining 50 percent shall be collected by the recipient and returned to HUD within 15 days of the sale for use under the HOPE 3 program, subject to any limitations contained in appropriations Acts.

Section 725. Use of Proceeds From Sales to Eligible Families

The entity that transfers ownership interests in units to eligible families, or another entity specified in the approved application, shall use the proceeds, if any, from the initial sale for costs of the homeownership program, including improvements to properties under the program, business opportunities for low-income families, supportive services related to the homeownership program, additional homeownership opportunities, and other activities approved by HUD, either as part of the approved application or later on request.

Section 730. Third Party Rights

The requirements under this notice regarding housing quality standards, resale, or transfer of the ownership interest of a homeowner shall be judicially enforceable against the recipient with respect to actions involving rehabilitation, and against purchasers of eligible property under the HOPE program or their successors in interest (to the extent such requirements apply to purchasers and their successors in interest) with respect to other actions by affected low-income families, RMCs, RCs, PHAs/IHAs, and any agency, corporation, or authority of the United States government. The parties specified in the preceding sentence shall be entitled to reasonable attorney fees upon prevailing in any such judicial action.

Section 735. Displacement Prohibited; Protection of Nonpurchasing Residents.

(a) *Displacement Prohibited.* No person may be displaced from his or her dwelling as a direct result of a homeownership program under this notice. This does not preclude terminations of tenancy for violation of the terms of occupancy of the unit. In addition to any applicable sanctions under the grant agreement, a violation of this paragraph may trigger a requirement to provide relocation assistance in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and government-wide implementing regulations at 49 CFR part 24.

(b) *Temporary Relocation.* The recipient shall provide each resident of an eligible property, who is required to relocate temporarily to permit work to be carried out, with suitable, decent, safe, and sanitary housing for the temporary period and shall reimburse the resident for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the costs of moving to and from the temporarily occupied housing and any increase in monthly costs of rent and utilities.

(c) *Relocation Assistance for Residents Who Elect to Move.* The recipient shall provide each nonpurchasing resident who elects to move with relocation assistance in accordance with the approved homeownership program. The program shall provide, at least, the following assistance:

(1) Advisory services including timely information, counseling (including the provision of information on a resident's rights under the Fair Housing Act), and referrals to suitable, affordable, decent, safe, and sanitary alternative housing;

(2) Payment for actual, reasonable moving expenses; and

(3) Relocation housing assistance sufficient to permit relocation to suitable, affordable, decent, safe, and sanitary housing. This requirement is met if the cost of the housing to the family does not exceed the higher of 30 percent of adjusted family income or the amount paid by the family for the unit being vacated, and the housing is otherwise suitable and decent, safe, and sanitary.

(d) *Notice of Relocation Assistance.* As soon as feasible, each recipient shall give each resident of an eligible property a written description of the applicable provisions of this section.

Section 740. Cash and Management Information System

(a) *General.* Disbursement of all approved HOPE 3 planning and implementation grant funds is managed through HUD's Cash and Management Information (C/MI) System for the HOPE 3 program. The C/MI System is a computerized system which manages and disburses HOPE 3 funds, and collects and reports information on their use Funds will be disbursed through the United States Treasury. The United States Treasury account includes funds awarded to the recipient and obligated through the grant agreement executed by HUD and the recipient Recipients will be required to establish a local account for the receipt of HOPE 3 program funds.

(b) *Disbursement of HOPE 3 Funds.* After a recipient executes the HOPE 3 grant agreement and submits the appropriate banking and security documents, HOPE 3 funds may be drawn down for general program activities under a planning or implementation grant, as applicable. HOPE 3 funds are drawn down from a United States Treasury account for the program by the recipient by electronic funds transfer. For implementation grants, all drawdowns related to specific properties will only be allowed if the individual properties have been entered into the C/MI System (see paragraph (c) of this section). All funds drawn down will be deposited in the local account of

the HOPE 3 recipient within 48 to 72 hours of the disbursement request. Any drawdown of HOPE 3 funds from the United States Treasury account is conditioned upon the submission of satisfactory information by the HOPE 3 recipient about the program and compliance with other procedures specified by HUD in HUD's forms and issuances concerning the C/MI System. Copies of these forms and issuances may be obtained from HUD field offices. Funds not disbursed within program deadlines may be automatically deobligated by the C/MI System.

(c) *Property Set-Up (Implementation Grants only).* (1) Before disbursement of any HOPE 3 funds related to specific properties, the recipient must set up each property in the C/MI System. Disbursements that require the set up of properties in the C/MI System are all disbursements related to a specific property including acquisition, rehabilitation, financial assistance to homebuyers (such as down payment assistance, interest rate buy-down, and closing cost assistance), architectural and engineering, permanent and temporary relocation. Within 10 calendar days of property set up, the recipient is required to submit a property set up report to HUD for each property set up in the C/MI System.

(2) If the property set-up report is not received within 20 days of the property set-up call, the property will be canceled automatically by the C/MI System. In addition, a property which has been set up in the C/MI System for 12 months without an initial disbursement of funds may be canceled by the C/MI System.

(d) *Payment Voucher.* As post-documentation of each drawdown of funds from the United States Treasury account, each recipient shall submit a payment voucher to HUD, for each drawdown, in the form and by the deadline required by HUD. For implementation grant program disbursements or planning grant disbursements, the recipient will be suspended from requesting additional program implementation grant disbursements or planning grant disbursements until the payment voucher is received. In addition, for implementation grants, if the payment voucher is not received within 10 calendar days of the drawndown request for a specific property, the recipient will be suspended from setting up new properties until the payment voucher is received by HUD.

(e) *Submission of Property Transfer Report.* A property transfer report for all properties assisted with implementation grants must be submitted to HUD within 15 days of the transfer of the property but no later than 25 months after the effective date of the grant agreement. If a satisfactory property transfer report is not submitted by the due date, HUD will suspend further property set-ups. Property set-ups will remain suspended until a satisfactory property transfer report is received and entered into the C/MI System.

(f) *Submission of Property Completion Report.* A property completion report for properties assisted with implementation grants must be submitted to HUD within 30 days of the final disbursement of funds from all sources for that particular property, but no later than 25 months after the submission of the property transfer report. If a satisfactory property completion report is not submitted by the due date, HUD will suspend further property set-ups for the recipient. Property set-ups will remain suspended until a satisfactory property completion report is received and entered into the C/MI system.

Section 745. Environmental Procedures and Standards

(a) Before any amounts under this program are used to acquire or rehabilitate an eligible property, HUD shall determine whether the proposed activities trigger applicability thresholds for the applicable Federal environmental laws and authorities. These may apply when the property is (1) located within designated coastal barriers; (2) listed on, or eligible for listing on, the National Register of Historic Places; or is located within, or adjacent to, an historic district; (3) located near hazardous operations handling fuels or chemicals of an explosive or flammable nature; (4) contaminated by toxic chemicals or radioactive materials; (5) located within a runway clear zone at a civil airport or within a clear zone or accident potential zone at a military airfield; (6) located within a special flood hazard area; (7) within a location requiring flood insurance protection; or (8) located within a high noise area.

(b) A recipient may choose to make the threshold reviews itself or with assistance from State or local governments or qualified persons or to refer the property to HUD for threshold review. Where the recipient makes the threshold review itself, it shall submit the result to HUD.

(c) If a recipient chooses not to make the threshold reviews, it shall submit information to HUD to permit HUD to make the review.

(d) If HUD determines on the basis of the recipient's threshold review or HUD's threshold review that one or more of the thresholds are exceeded, HUD shall conduct an environmental review of that issue and, if appropriate, establish mitigating measures that the recipient shall carry out for the property unless it decides to select an alternate property.

(e) HUD will issue a notice specifying applicable threshold and documentation requirements.

VIII. Records, Reports, and Audit of Recipients

Section 801. Recordkeeping

(a) *General Records.* Each recipient shall keep records that will facilitate an effective audit to determine compliance with program requirements and that fully disclose—

(1) the amount and disposition by the recipient of the planning and implementation grants received under this notice, including sufficient records that document the reasonableness and necessity of each expenditure;

(2) the amount and disposition of proceeds from financing obtained in connection with the program, sales to eligible families, and any funds recaptured upon sale by the homeowner;

(3) the total cost of the homeownership program;

(4) the amount and nature of any other assistance, including cash, property, services, or other items contributed as a condition of receiving an implementation grant;

(5) the cost or other value of all in-kind contributions towards the match required by Section 410; and

(6) any other proceeds received for, or otherwise used in connection with, the homeownership program.

(b) *Family Size and Income and Racial, Ethnic, and Gender Data.* The recipient shall maintain records on the family size and income, and racial, ethnic, and gender characteristics, of families who apply for homeownership and families who become homeowners.

(c) *Coopearative and Condominium Agreements.* The recipient shall maintain a copy of any condominium and cooperative association agreements for properties under the approved homeownership program.

(d) *Amounts Available for Reuse.* The recipient shall keep and make available to HUD all records necessary to calculate accurately payments due to HUD under Section 720(d) and Section 725.

(Approved by the Office of Management and Budget, with respect to implementation grants, under control 2506–0119)

Section 805. Reports

The recipient shall submit reports required by HUD (Approved by the Office of Management and Budget, with respect to implementation grants, under control number 2506–0119)

Section 810. Access by HUD and the Comptroller General

For the purpose of audit, examination, monitoring, and evaluation each recipient shall give HUD (including any duly authorized representatives and the Inspector General) and the Comptroller General of the United States (and any duly authorized representatives) access to any books, documents, papers, and records of the recipient that are pertinent to assistance received under this notice, including all records required to be kept by Section 801

IX. Waiver Authority

Section 901 Waiver Authority

Upon determination of good cause, the Secretary of Housing and Urban Development may waive any provision of this notice, not otherwise required by law, except that the provisions that establish deadlines for receipt of any modifications to applications and the cap on planning grants in Section 301(b)(2) may not be waived. Each such waiver shall be in writing and shall be supported by documentation of the pertinent facts and grounds. This waiver authority may be exercised by the Secretary or the Assistant Secretary for Community Planning and Development. Where another HUD program regulation is involved, the Secretary or the appropriate Assistant Secretary may waive the regulation. For example, where a waiver to a public and Indian housing regulation is requested for the HOPE 3 program, it may be waived by the Assistant Secretary for Public and Indian Housing. The Secretary periodically will publish notice of granted waivers in the **Federal Register** HUD may change submission deadlines established by this notice by subsequent notice published in the **Federal Register**.

Dated: December 20, 1991

Jack Kemp,

Secretary

[FR Doc. 92–588 Filed 1–13–92; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-92-3360; FR-3194-N-01]

HOPE for Homeownership of Single Family Homes Program; Notice of Fund Availability

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of fund availability for FY 1992.

SUMMARY: This NOFA announces the availability of $95 million in funding for planning and implementation grants for the HOPE for Homeownership of Single Family Homes Program (HOPE 3). (HOPE is an acronym for Homeownership and Opportunity for People Everywhere.) In the body of this document is information concerning eligible applicants, the funding available for planning and implementation grants, the application packages, and their processing. Elsewhere in this issue of the **Federal Register** are the Notices of Fund Availability for HOPE 1, the HOPE for Public and Indian Housing Homeownership Program, and HOPE 2, the HOPE for Homeownership of Multifamily Units Program. Also elsewhere in this issue of the **Federal Register** is the Program Guidelines which revises the HOPE 3 Notice of Program guidelines published in the **Federal Register** on February 4, 1991. These revised guidelines contain detailed programmatic information and the requirements governing the FY 1992 HOPE 3 Program. Similar revised Guidelines for HOPE 1 and 2 also appear in this issue. Applicants are advised that they must consult the revised Program Guidelines in order to prepare an application. Many of the requirements of the HOPE 3 program are not listed in this NOFA, and failure to follow the guidelines will result in applications being rejected by HUD.

DATES: Applicants for planning or implementation grants for the HOPE 3 program must be received in the appropriate HUD Field Office by close of business for that office on April 17, 1992. Applications may also be hand delivered to the appropriate HUD Field Office by close of business for that office on or before the deadline date. Applications sent by facsimile will not be accepted. HUD will not waive this deadline for actual submission for any reason. No applications may be submitted prior to 30 calendar days before the deadline. Applications submitted more than 30 calendar days before the deadline will be returned to applicants.

ADDRESSES: An original and two copies of the completed application must be submitted to the HUD Field Office having jurisdiction over the locality in which the proposed program is located. Applications should be addressed to the Attention of: Director, Community Planning and Development Division. A list of HUD Field Offices appears at the end of this NOFA. In States with more than one Field Office, applicants must submit their applications to the correct Field Office. Applicants are advised to contact their local office to confirm the appropriate place and time of close of business for submission. Failure to submit an application to the correct Field Office in accordance with above procedures will result in disqualification of the application.

FOR FURTHER INFORMATION CONTACT: John Garrity, Office of Affordable Housing Programs, Department of Housing and Urban Development, room 7158, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–0324. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1–800–877–TDDY, 1–800–877–8339, or 202–708–9300. (Telephone numbers, other than "800" TDD numbers, are not toll free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA with respect to implementation grants contained in §§ 415, 801, and 805 have been approved under the Paperwork Reduction Act of 1980 by the Office of Management and Budget (OMB), and have been assigned OMB control number 2506–0119. The amended guidelines add three new collection of information requirements that relate to planning grants at sections 310, 801, and 805 and also add new requirements related to the Cash and Management Information System and Environmental Procedures and Standards at sections 740 and 745. These have been submitted to OMB for review under the Paperwork Reduction Act of 1980.

I. Purpose and Substantive Description

a. Authority

The funding made available under this NOFA is authorized by section 441 of the National Affordable Housing Act (Pub. L. 101–625, November 28, 1990), which created the HOPE 3 Program.

B Allocation Amounts

The purpose of this NOFA is to announce the availability of a total of $95 million in funds, appropriated by the Department's appropriations Act for fiscal year 1992 (Pub. L. 102–139, October 28, 1991), for grants as follows:

- $10 million for planning grants.
- $85 million for implementation grants.

The amount made available for implementation grants has been sub-allocated to each of the 10 HUD Regions by a formula described in the amended Notice of Program Guidelines. This formula results in the following sub-allocation by HUD Region for FY 1992:

Region I	$3,400,000
Region II	9,100,000
Region III	7,400,000
Region IV	16,200,000
Region V	12,900,000
Region VI	14,700,000
Region VII	3,300,000
Region VIII	4,250,000
Region IX	11,400,000
Region X	2,350,000

There are no Regional sub-allocations of funds for planning grants.

C. Reallocation of Funds

If funds remain after HUD approves all approvable planning grant applications, HUD shall use them to fund implementation grants, publish another NOFA, or invite prior applicants to submit amended applications. See section 315(e) of the amended guidelines.

If funds remain after HUD has approved all approvable implementation grant applications in a Region, the remaining amounts from each Region (plus any amounts available due to deobligation) may be combined and HUD may reallocate to Regions having more applications meeting threshold requirements than can be funded from the initial allocation to the Region. HUD shall reallocate these funds using the same factors as used for the original allocation.

If amounts remain after applying these procedures, they may be made available to fund the highest ranked, unfunded planning grant applications or made available for additional applications solicited through a NOFA.

As an alternative to the procedure in the proceeding paragraph for dealing with insufficient approvable implementation grant applications, the remaining amounts may be made directly available to fund the highest ranked, unfunded planning grant applications or additional applications solicited through a NOFA.

D. Planning Grant Cap

The amount of a planning grant may not exceed $100,000.

E. Implementation Grant Cap

A single applicant may apply for more than one implementation grant, but HUD will not approve grants for any one applicant that total more than 5 percent of the total amount available under any one NOFA for HOPE 3 implementation grants. For FY 1992, the maximum total grant amount for a single applicant is $4.25 million.

F. Eligible Applicants

For both planning and implementation grants, an eligible applicant is a private nonprofit organization; a cooperative association; or a public body (including a PHA, an IHA, and an agency or instrumentality of a public body) in cooperation with a private nonprofit organization. An applicant may apply for both a planning and implementation grant in response to any one NOFA, but may be selected to receive only one form of grant during that year. (See sections 301(b) and 401(c)(2).)

G. Certification of Consistency with the Comprehensive Housing Affordability Strategy

Applications for HOPE grants must be accompanied by a certification of consistency with an approved Comprehensive Housing Affordability Strategy (CHAD) or abbreviated housing strategy from the public official responsible for submitting the CHAS, or his or her authorized representative. State and local government applicants must have submitted a full CHAS or an abbreviated strategy, and must provide a certification of consistency at the time of application. All other applicants (including private nonprofit organizations and public housing agencies) must obtain the certification from the lowest level of government having either a full CHAS or an abbreviated strategy covering the jurisdiction in which the program (project) is to be located. Where the program will be carried out in more than one unit of general local government with a CHAS, a certification for each shall be included. Indian Tribes and Indian Housing Authorities are not subject to the requirements for preparation of a CHAS or submission of a certification of consistency with the CHAS.

For an application for a HOPE grant to be consistent with a CHAS: (1) Homeownership for low-income families must be identified as a priority in the narrative and (for local jurisdictions only) Table 3 (Priorities for Assistance) of Section II (Strategy) of the CHAS; (2) the HOPE program for which funding is sought should be mentioned (whether by name or by program type) in the narrative of Section III (Annual Plan) of the CHAS as among the Federal resources to be used in FY 1992; and (3) a specific dollar amount for the HOPE program applied for must be entered in Column A of Table 4/5A (Anticipated Resources and Plan for Investment) of Section III. (NOTE: Since Table 4/5A for States does not include information on applications by entities other than the State itself, a State may certify consistency for a HOPE application from a private nonprofit or a PHA even if there is no dollar amount entered in Column A of the State's Table 4/5A).

If a jurisdiction's strategy identifies low-income homeownership as a priority in the Section II narrative, but does not mention the HOPE program in the Section III narrative or include a specific dollar amount for the program in Column A of Table 4/5A, the jurisdiction may amend its strategy by correcting its Section III narrative and Table 4/5A to be consistent with its strategy without doing a substantial amendment, which requires citizen participation. However, if there is no dollar amount entered in Column A of Table 4/5A and there is also no priority for low-income homeownership identified in the Section II narrative, a substantial amendment, requiring citizen participation, would be needed to modify the CHAS to allow the jurisdiction to provide a certification of consistency.

All CHASs or abbreviated strategies, revised tables and narratives for nonsubstantial amendments, or substantial amendments, as well as the required certifications of consistency, must be submitted to HUD no later than at the time the application for HOPE funding is submitted.

To assist applicants in meeting the certification requirement where a CHAS, abbreviated strategy, or amendment has not yet been approved, HUD will accept applications that are accompanied by a certification that the application is consistent with the housing strategy submitted with, or as amended by a submission with, the application, and that the applicant will follow the strategy so submitted or amended when it is approved by HUD.

II. Planning Grant Applications

A. Application Process

Application packages, including instructions on preparing applications, for planning grants are available from the appropriate HUD Field Office (see list of HUD Field Offices at the end of this NOFA). Additional information regarding the submission of applications is included in the packages.

Only timely applications submitted to the correct Field Office will be considered for funding. Applications (original and two copies) must be physically received by the deadline at the local HUD Field Office, Attention: Director, Community Planning and Development Division. It is not sufficient for an application to bear a postmark within the deadline. Applications sent by facsimile will not be accepted.

B. Application Submission Requirements

Complete application submission requirements are contained in the application packages. All potential applicants are urged to contact their HUD Field Office for information and guidance about program requirements and preparation of the application and for the time and place of any workshops and/or training sessions to be held within the Field Office's jurisdiction.

C. Selection Criteria/Ranking Process

The selection process for planning grants under the HOPE for Homeownership of Single Family Homes Program consists of screening and, then, for those applications meeting all screening requirements, rating and ranking under four substantive selection criteria.

D. Screening Process/Corrections to Deficient Applications

1. HUD shall screen each application submitted on or before the deadline to determine if it is complete, is internally consistent, and contains correct computations. In addition, HUD shall determine whether there appears to be a sufficient number of suitable, available properties in the general locations identified in the application for the proposed activities. For this purpose, at least 10 suitable eligible properties must be determined to be available.

2. Where HUD determines an application is deficient in one or more of these areas, it shall notify the applicant in writing and give it an opportunity to correct the deficiencies in its application. However, the applicant may not substantially revise the application, such as by substituting another applicant or changing other fundamental features of the homeownership program, because that would not be fair to other applicants.

3. The notification shall require the applicant to submit additional or

corrected material so that it is received in the appropriate HUD Field Office no later than close-of-business on the 14th calendar day after the date of the written notification to the applicant giving it an opportunity to modify its application. HUD may not extend this deadline for actual receipt of the material for any reason. HUD shall not consider further any applications that are not complete, are internally inconsistent, or do not contain correct computations after the opportunity, if any, to submit additional or corrected material, or that fail to comply with other program requirements.

E. Selection Criteria

Rating and ranking will be done using the following four substantive selection criteria:

1. Capability of the applicant—up to 40 points.
2. Local support—up to 20 points.
3. Need for the homeownership program—up to 20 points.
4. Planning approach—up to 20 points.

A complete description of the procedure for rating applications, including use of a bonus point system for planning grant applications under certain circumstances, and the factors considered under each selection criterion may be found in section 315 of the amended Notice of Program Guidelines.

F. Ranking and Selection

Field Offices will rate the applications, except for the "Need" factor. Regional Offices will review for consistency of ratings among Field Offices and may adjust scores. HUD Headquarters will assign points for the "Need" factor, because it is a relative factor across applications. HUD Headquarters will use these rating scores to rank all applications together, after adjusting ratings for national consistency, if necessary. HUD shall examine the ranking and, where it determines that applications falling below a certain point total are not suitable or not feasible for homeownership, it may establish a minimum number of points for applications to qualify to be selected for funding. A complete description of the procedure for selection, including the award of bonus points to certain applications, may be found in section 315 of the amended Notice of Program Guidelines.

III. Implementation Grant Applications

A. Application Process

Application packages for implementation grants, including instructions for preparing applications, are available from the appropriate HUD Field Office (see the list of HUD Field Offices at the end of this NOFA). Additional information regarding the submission of applications is included in the package.

Only timely applications received in the appropriate Field Office will be considered for funding. Applications (original and two copies) must be physically received by the deadline at the appropriate HUD Field Office, Attention: Director, Community Planning and Development Division. It is not sufficient for an application to bear a postmark within the deadline. Applications sent by facsimile will not be accepted.

B. Application Submission Requirements

Complete application submission requirements are contained in the application package. All potential applicants are urged to contact their HUD Field Office for information and guidance from HUD about program requirements and preparation of an application and for the time and place of any workshops and/or training sessions to be held within the Field Office's jurisdiction.

C. Selection Process

The selection process for implementation grants under the HOPE 3 Program consists of a screening, a threshold review, and then, for those applications meeting all threshold requirements, rating and ranking under nine substantive selection criteria. Rating and ranking will only occur if there are more applications that pass threshold than funds available in that Region. Field Offices will rate applications on selection criteria 1–4, 6, 7, and 9 and then forward their applications to their respective Regional Office. Regional Offices will review Field Office scores for consistency and may adjust scores and will rate on criteria 5 and 8 (which are relative factors across the Region).

D. Screening Process/Corrections to Deficient Applications

1. HUD shall screen each application submitted on or before the deadline to determine if it is complete, is internally consistent, and contains correct computations. Where HUD determines an application is deficient in one or more of these areas, it shall notify the applicant in writing and give it an opportunity to correct the deficiencies in its application. However, the applicant may not substantially revise the application, such as by substituting another neighborhood or applicant or changing other fundamental features of the homeownership program, because that would be unfair to other applicants.

2. The notification shall require the applicant to submit additional or corrected material so that it is received in the appropriate HUD Field Office no later than close-of-business on the 14th calendar day after the date of the written notification to the applicant giving it an opportunity to modify its application. HUD may not extend this deadline for actual receipt of the material for any reason. HUD shall not consider further any applications that are not complete, are internally inconsistent, or do not contain correct computations after the opportunity, if any, to submit additional or corrected material, or that fail to comply with other program requirements.

E. Threshold Review

HUD shall review each application that qualifies for additional consideration because it passed the screening process to determine if it meets certain threshold criteria. These threshold criteria are contained in section 420 of the amended Notice of Program Guidelines.

F. Selection criteria

All applications meeting threshold requirements will be selected for funding if sufficient funds are available within the Regional allocation. If there are more applications that pass threshold review than funds available in that Region, all applications which pass the threshold review will be rated and ranked, using the following nine substantive selection criteria:

1. Capability of the applicant—up to 20 points.
2. Local support—up to 14 points.
3. Quality—up to 10 points.
4. Relationship to the Comprehensive Housing Affordability Strategy (CHAS)—up to 5 points.
5. Efficiency—up to 15 points.
6. Minority Business Enterprise/ Women-owned Business Enterprise—up to 5 points.
7. Inventory—up to 11 points.
8. Need—up to 15 points.
9. Fair Housing Choice—up to 5 points.

A complete description of the rating of applications and of the factors considered under each selection criterion may be found in section 425 of the amended Notice of Program Guidelines.

G. Ranking and Selection

Regional Offices will rank their applications, and make recommendations for selection, based on their sub-allocations, to HUD Headquarters, which will make the selections. If an applicant submits applications for both planning and implementation grants, the Field Office will review the application for an implementation grant first to determine if it passes all screening and threshold requirements. If the application does, it will be processed (and the application for a planning grant will not be processed). If it does not pass all screening and threshold requirements, the applicant's planning grant application will be processed instead. A complete description of the procedure for selection is contained in the amended Notice of Program Guideline in section 425.

IV. Other Matters

A. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

B. Federalism Executive Order

The General Counsel has determined, as the Designated Official for HUD under section 6(a) of Executive Order 12612, Federalism, that the provisions in this NOFA are closely based on statutory requirements and impose no significant additional burdens on States or other public bodies. This NOFA does not affect the relationship between the Federal Government and the States and other public bodies or the distribution of power and responsibilities among various levels of government. Therefore, the policy is not subject to review under Executive Order 12612.

C. Family Executive Order

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has also determined that some of the policies in this NOFA will have a potential significant impact on the formation, maintenance, and general well-being of the family. Achievement of homeownership by low-income families in the program can be expected to support family values, by helping families achieve security and independence; by enabling them to live in decent, safe and sanitary housing; and by giving them the skills and means to live independently in mainstream American society. Since the impact on the family is beneficial, no further review is necessary.

D. Section 102 of the HUD Reform Act

On March 14, 1991, the Department published in the **Federal Register** a final rule to implement section 102 of the Department of Housing and Urban Development Reform Act of 1989 (24 CFR part 12, 56 FR 11032). Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by the Department.

Since HUD makes assistance under this program available on a competitive basis, 24 CFR part 12 requires HUD to:

—Ensure that documentation and other information regarding each application submitted to the Department are sufficient to indicate the basis upon which assistance was provided or denied. HUD must make this material available for public inspection for a five-year period. (§ 12.14 (b)) HUD will provide further guidance on how this material may be accessed in a later notice published in the **Federal Register**.

—Publish a notice in the **Federal Register** at least quarterly indicating the recipients of the assistance. (§ 12.16(a))

E. Section 103 of the HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 was published May 13, 1991 (56 FR 22088) and became effective June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by 24 CFR part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquires to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815; TDD: 708–1112. (These are not toll-free numbers.)

F. Section 112 of the HUD Reform Act

Section 112 of the HUD Reform Act amended the Department of Housing and Development Act by adding section 13, which contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department *and* those who are paid to provide the influence. The second prohibits the payment of fees to those who paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of the assistance.

Section 13 was implemented by final rule (24 CFR part 86) published in the **Federal Register** on May 17, 1991 (56 FR 22912). If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in appendix A of 24 CFR part 86.

Any questions concerning the rule should be directed to Arnold J. Haiman, Director, Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 24410. Telephone: (202) 708–3815; TDD: (202) 708–1112. (These are not toll-free numbers.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

G. Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (The "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the federal government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable

certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

HUD Field Offices

Alabama

Jasper H. Boatright, Beacon Ridge Tower, 600 Beacon Pkwy. West, Suite 300, Birmingham, AL 35209–3144; (205) 290–7645, (TDD) (205) 731–1617.

Alaska

Colleen Craig, Fed. Bldg., 222 W. 8th Ave., #64, Anchorage, AK 99513–7537; (907) 271–3669.

Arizona

Diane Domzalski, 400 N. 5th St., Suite 1600, 2 Arizona Center, Phoenix, AZ 85004; (602) 379–4754, (TDD) (602) 379–4461.

Arkansas

Billy M. Parsley, Lafayette Bldg., 523 Louisiana, Suite 200, Little Rock, AR 72201–3707; (501) 324–6375, (TDD) (501) 324–5405.

California (Southern)

Herbert L. Roberts, 1615 W. Olympic Blvd., Los Angeles, CA 90015–3801; (213) 251–7235, (TDD) (213) 251–7038.

(Northern)

Gordon H. McKay, 450 Golden Gate Ave., P.O. Box 36003, San Francisco, CA 94102–3448; (415) 556–5576, (TDD) (415) 556–8357.

Colorado

Barbara Richards, Exec. Tower Bldg., 1405 Curtis Street, Denver, CO 80202–2349; (303) 844–3811.

Connecticut

Daniel Kolesar, 330 Main Street, Hartford, CT 06106–1860; (203) 240–4508, (TDD) (203) 240–4522.

Delaware

John Kane, Liberty Sq. Bldg., 105 S. 7th St., Philadelphia, PA 19106–3392; (215) 597–2665, (TDD) (215) 597–5564.

District of Columbia (including Northern Virginia and Montgomery and Prince George's Counties, Maryland)

James H. McDaniel, 820 First St., NE, Washington, DC 20002; (202) 275–0094, (TDD) (202) 275–0967.

Florida

James N. Nichol, 325 W. Adams St., Jacksonville, FL 32202–4303; (904) 791–3587, (TDD) (904) 791–1241.

Georgia

Charles N. Straub, Russell Fed. Bldg., Room 688, 75 Spring St., SW, Atlanta, GA 30303–3388; (404) 331–5139, (TDD) (404) 730–2654.

Hawaii

Patti A. Nicholas, Acting, 7 Waterfront Plaza, Suite 500, 500 Ala Moana Blvd., Honolulu, HI 96813–4918; (808) 541–1327, (TDD) (808) 551–1356.

Idaho

John G. Bonham, 520 SW 6th Ave., Portland, OR 97204–1596 (503) 326–7018.

Illinois

Richard Wilson, Ralph Metcalfe Federal Building, 77 West Jackson Blvd., Chicago, IL 60604–3507; (312) 353–1696.

Indiana

Robert F. Poffenberger, 151 N. Delaware St., Indianapolis, IN 46204–2526; (317) 226–5169.

Iowa

Gregory A. Bevirt, Braiker/Brandeis Bldg., 210 S. 16th St., Omaha, NE 68102–1622; (402) 221–3703, (TDD) (402) 221–3703.

Kansas

Miguel Madrigal, Gateway Towers 2, 400 State Ave., Kansas City, KS 66101–2406; (913) 236–2184, (TDD) (913) 236–3972.

Kentucky

Ben Cook, P.O. Box 1044, 601 W. Broadway, Louisville, KY 40201–1044; (502) 582–5394, (TDD) (502) 582–5139.

Louisiana

Greg Hamilton, P.O. Box 70288, 1661 Canal St., New Orleans, LA 70112–2887; (504) 589–7212.

Maine

David Lafond, Norris Cotton Fed. Bldg., 275 Chestnut St., Manchester, NH 03101–2487; (603) 666–7640, (TDD) (603) 666–7518.

Maryland (except Montgomery and Prince George's Counties)

Harold Young, Equitable Bldg., 3rd Floor, 10 N. Calvert St., Baltimore, MD 21202–1865; (301) 962–2417, (TDD) (301) 962–0106.

Massachusetts

Frank Del Vecchio, Thomas P. O'Neill, Jr., Fed. Bldg., 10 Causeway St., Boston, MA 02222–1092; (617) 565–5342, (TDD) (617) 565–5453.

Michigan

Richard Paul, Patrick McNamara Bldg., 477 Michigan Ave., Detroit, MI 48226–2592; (313) 226–4343.

Minnesota

Shawn Huckleby, 220 2nd St. South, Minneapolis, MN 55401–2195; (612) 370–3019.

Mississippi

Jeanie E. Smith, Dr. A.H. McCoy Fed. Bldg., 100 W. Capitol St., Room 910, Jackson, MS 39269–1096; (601) 965–4765, (TDD) (601) 965–4171.

Missouri

(Eastern)

David H. Long, 1222 Spruce St., St. Louis, MO 63103–2836; (314) 539–6524, (TDD) (314) 539–6331.

(Western)

Miguel Madrigal, Gateway Towers 2, 400 State Ave., Kansas City, KS 66101–2406; (913) 236–2184, (TDD) (913) 236–3972.

Montana

Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202–2349; (303) 844–3811.

Nebraska

Gregory A. Bevirt, Braiker/Brandeis Bldg., 210 S. 16th St., Omaha, NE 68102–1622; (402) 221–3703, (TDD) (402) 221–3703.

Nevada

(Las Vegas, Clark Cnty.) Diane Domzalski, 400 N. 5th St., Suite 1600, 2 Arizona Center, Phoenix, AZ 85004; (602) 379–4754, (TDD) (602) 379–4461.

(Remainder of state)

Gordon H. McKay, 450 Golden Gate Ave., P.O. Box 36003, San Francisco, CA 94102–3448; (415) 556–5576, (TDD) (415) 556–8357.

New Hampshire

David Lafond, Norris Cotton Fed. Bldg., 275 Chestnut St., Manchester, NH 03101–2487; (603) 666–7640, (TDD) (603) 666–7518.

New Jersey

Frank Sagarese, Military Park Bldg., 60 Park Pl., Newark, NJ 07102–5504; (201) 877–1776, (TDD) (201) 877–6649.

New Mexico

R.D. Smith, 1600 Throckmorton, P.O. Box 2905, Fort Worth, TX 76113–2905; (817) 885–5483, (TDD) (817) 728–5447.

New York

(Upstate)

Michael F. Merrill, Lafayette Ct., 465 Main St., Buffalo, NY 14203–1780; (716) 846–5768, (TDD) (716) 846–5787.

(Downstate)

Joan Dabelko, 26 Federal Plaza, New York, NY 10278–0068; (212) 264–2885, (TDD) (212) 264–0927.

North Carolina

Charles T. Ferebee, 415 N. Edgeworth St., Greensboro, NC 27401–2107; (919) 333–5711, (TDD) (919) 333–5518.

North Dakota

Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202–2349; (303) 844–3811.

Ohio

Jack E. Riordan, 200 N. High St., Columbus, OH 43215–2499; (614) 469–6743.

Oklahoma

Katie Worsham, Murrah Fed. Bldg., 200 NW 5th St., Oklahoma City, OK 73102–3202; (405) 231–4973, (TDD) (405) 231–4181.

Oregon

John G. Bonham, 520 SW 6th Ave., Portland, OR 97204–1596; (503) 326–7018.

Pennsylvania

(Western)

Bruce Crawford, Old Post Office and Courthouse Bldg., 700 Grant St., Pittsburgh, PA 15219–1906; (412) 644–5493, (TDD) (412) 644–5747.

(Eastern)

John Kane, Liberty Sq. Bldg., 105 S. 7th St., Philadelphia, PA 19106–3392; (215) 597–2665, (TDD) (215) 597–5564.

Puerto Rico

Carmen R. Cabrera, 159 Carlos Chardon Ave., San Juan, PR 00918–1804; (809) 766–5576.

Rhode Island

Frank Del Vecchio, Thomas P. O'Neill, Jr., Fed. Bldg., 10 Causeway St., Boston, MA 02222–1092; (617) 565–5342, (TDD) (617) 565–5453.

South Carolina

Louis E. Bradley, Acting, Strom Thurmond Fed. Bldg., 1835–45 Assembly St., Columbia, SC 29201–2480; (803) 765–5564.

South Dakota

Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202–2349; (303) 844–3811.

Tennessee

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Texas

(Northern)

R.D. Smith, 1600 Throckmorton, P.O.Box 2905, Fort Worth, TX 76113–2905; (817) 885–5483, (TDD) (817) 728–5447.

(Southern)

Robert W. Hicks, Washington Sq., 800 Dolorosa, San Antonio, TX 78207–4563; (512) 229–6820, (TDD) (512) 229–6885.

Utah

Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202–2349; (303) 844–3811.

Vermont

David Lafond, Norris Cotton Fed. Bldg., 275 Chestnut St., Manchester, NH 03101–2487; (603) 666–7640, (TDD) (603) 666–7518.

Virginia (except Northern Virginia)

Joseph Aversano, Fed. Bldg., 400 N. 8th St., P.O. Box 10170, Richmond, VA 23240–9998; (804) 771–2624, (TDD) (804) 771–2820.

Washington

John Peters, Arcade Plaza Bldg., 1321 2nd Ave., Seattle, WA 98101–2054; (206) 442–0374.

West Virginia

Bruce Crawford, Old Post Office and Courthouse Bldg., 700 Grant St., Pittsburgh, PA 15219–1906; (412) 644–5493, (TDD) (412) 644–5747.

Wisconsin

Lana J. Vacha, Henry Reuss Fed. Plaza, 310 W. Wisconsin Ave., Suite 1380, Milwaukee, WI 53203–2289; (414) 297–3113.

Wyoming

Barbara Richards, Exec. Tower Bldg., 1405 Curtis St., Denver, CO 80202–2349; (303) 844–3811.

Dated December 20, 1991.

Jack Kemp,

Secretary.

[FR Doc. 92–589 Filed 1–13–92; 8:45 am]

BILLING CODE 4210–32–M

federal register

Tuesday
January 14, 1992

Part V

Department of Education

Fund for the Improvement of Postsecondary Education—Special Focus Competition; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.116H]

Fund for the Improvement of Postsecondary Education—Special Focus Competition (Invitational Priority: College-School Partnerships To Improve Learning of Essential Academic Subject, Kindergarten through College)

Notice inviting applications for new awards for fiscal year 1992.

Purpose of Program: To provide grants to improve postsecondary education and educational opportunities.

Eligible Applicants: Institutions of postsecondary education, combinations of institutions of postsecondary education, and other public and private educational institutions and agencies.

Deadline for Transmittal of Applications: March 18, 1992.

Deadline for Intergovernmental Review: May 18, 1992.

Applications Available: January 15, 1992.

Available Funds: $300,000.

Estimated Range of Awards: $50,000—$150,000.

Estimated Average Size of Awards: $100,000.

Estimated Number of Awards: 3–6.

Budget Period: 12 months.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, and 86, with the exceptions noted in 34 CFR 630.4(b); and (b) The Regulations for this program in 34 CFR Part 630.

Priorities

Absolute Priority

Under 34 CFR 75.105(c)(3) and 34 CFR 630.21(c), and 34 CFR 630.12(b)(5), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority

Projects addressing a particular problem area or improvement approach in postsecondary education.

Invitational Priority

Within the absolute priority specified in this notice, the Secretary is particularly interested in applications that meet the following invitational priority. However under 34 CFR 75.105(c)(1) an application that meets this invitational priority does not receive competitive or absolute preference over other applications:

Projects for the improvement of teaching and sequencing of curricula across grade levels of disciplines identified in AMERICA 2000 and the National Education Goals, including English, history foreign languages, geography, mathematics, and natural science. Such programs will (1) design courses that build upon prior learning, avoid repetition and arbitrary discontinuities; (2) encourage a content-based pedagogy; (3) develop helpful textbooks and auxiliary materials; and (4) prepare school and college teachers, both preservice and inservice, to work with better-articulated curricula.

Selection Criteria

In evaluating applications for grants under this program competition, the Secretary uses the following selection criteria chosen from those listed in 34 CFR 630.32:

(a) *Significance for Postsecondary Education.* The Secretary reviews each proposed project for its significance in improving learning in essential academic subjects by determining the extent to which it would—

(1) Address an important problem or need;

(2) Represent an improvement upon, or important departure from, existing practice;

(3) Involve learner-centered improvements;

(4) Achieve far-reaching impact through improvements that will be useful in a variety of ways and in a variety of settings; and

(5) Increase the cost-effectiveness of services.

(b) *Feasibility* The Secretary reviews each proposed project for its feasibility be determining the extent to which—

(1) The proposed project represents an appropriate response to the problem or need addressed;

(2) The applicant is capable of carrying out the proposed project, as evidenced by, for example—

(i) The applicant's understanding of the problem or need;

(ii) The quality of the project design, including objectives, approaches, and evaluation plan;

(iii) The adequacy of resources, including money, personnel, facilities, equipment, and supplies;

(iv) The qualifications of key personnel who would conduct the project; and

(v) the applicant's relevant prior experience;

(3) The applicant and any other participating organizations are committed to the success of the proposed project, as evidenced by, for example—

(i) Contribution of resources by the applicant and by participating organizations;

(ii) Their prior work in the area; and

(iii) The potential for continuation of the proposed project beyond the period of funding (unless the project would be self-terminating); and

(4) The proposed project demonstrates potential for dissemination to or adaptation by other organizations, and shows evidence of interest by potential users.

(c) *Appropriateness of funding projects.* The Secretary reviews each application to determine whether support of the proposed project by the Secretary is appropriate in terms of availability of other funding sources for the proposed activities.

The Secretary gives equal weight to each of the applicable selection criteria on significance, feasibility, and appropriateness. Within each of these criteria, the Secretary gives equal weight to each of the subcriteria. In applying the criteria, the Secretary first analyzes an application in terms of each individual criterion. The Secretary then bases the final judgment of an application on an overall assessment of the degree to which the applicant addresses all selection criteria.

Supplementary Information

By supporting improvements in curriculum in the five core subjects, these priorities complement AMERICA 2000, the President's strategy for moving the nation toward achievement of the National Education Goals. This competition results from the legally mandated collaboration between the Fund for the Improvement of Postsecondary Education (FIPSE) and the Fund for the Improvement and Reform of Schools and Teachers (FIRST), two distinct programs within the U.S. Department of Education. While both are dedicated to educational reform, FIPSE focuses on postsecondary education, and FIRST on elementary and secondary education. The issues being addressed in this competition necessitate cooperation across these educational levels.

Applications that are directed from or that focus primarily on the postsecondary role in the schools should be submitted to FIPSE. Those that are directed from or that focus primarily on the elementary or secondary levels should be submitted to FIRST (which is proposing a competition that shares many features in common with this initiative of FIPSE), mindful of FIRST's Absolute Priority to create linkages with higher education. Applications that

incorporate significant elements of an inclusive K–16 approach could well be submitted to both. Throughout the development of the application, applicants are encouraged to focus on the substantive elements common to both FIPSE and FIRST as described in the competitions priorities and application materials.

This program will provide support to projects in the form of 2— and 3-year grants. Approximately 3-6 awards will be made by FIPSE at an average of $100,000 per year. In addition, approximately 5-8 grants will be made by FIRST under its competition at an average of $100,000 per year These are estimates and do not bind the Department of Education to a specific number of grants or to the amount of any grant.

For Applications or Information Contact

Sherrin Marshall, FIPSE, U.S. Department of Education, room 3100, ROB–3, 7th and D Sts., SW., Washington, DC, 20202–5175. For applications and information on the FIRST competition contact: Carl Jensen, FIRST, U.S. Department of Education, 555 New Jersey Ave., NW., room 522, Washington, DC, 20208–5524. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority

20 U.S.C 1135–1135a–3.

Dated: January 2, 1992.

Carolynn Reid-Wallace,

Assistant Secretary for Postsecondary Education.

[FR Doc. 92–873 Filed 1–13–92; 8:45 am]

BILLING CODE 4000–01–M

federal register

Tuesday
January 14, 1992

Part VI

Department of Education

Fund for the Improvement and Reform of Schools and Teaching: Schools and Teachers Program; Notice

DEPARTMENT OF EDUCATION

[CFDA NO: 84.211C]

Fund for the Improvement and Reform of Schools and Teaching: Schools and Teachers Program

Notice inviting applications for new awards for fiscal year 1992.

Purpose of Program: To support Schools and Teachers projects that improve educational opportunities for and the performance of, elementary and secondary school students and teachers.

Eligible Applicants: State educational agencies, local educational agencies, institutions of higher education, nonprofit organizations, individual public or private schools, consortia of individual schools, and consortia of these schools and institutions.

Deadline for Transmittal of Applications: 3/18/92.

Deadline for Intergovernmental Review: 5/18/92.

Applications Available: 1/24/92.

Available Funds: $700,000 (est.).

Estimated Range of Awards: $50,000–$150,000.

Estimated Average Size of Awards: $100,000.

Estimated Number of Awards: 7.

Note: The Department is not bound by these estimates.

Budget Period: 12 months.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 757.

Priorities

Absolute Priority

Under 34 CFR 75.105(c)(3), 34 CFR 757.4(g), and 34 CFR 757.5(a), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Projects that establish closer ties between local schools and an institution of higher education to increase educational achievement.

Competitive Preference Priorities

Within the absolute priority specified in this notice, the Secretary, under 34 CFR 75.105(c)(2)(i) and 34 CFR 757.5(b), gives preference to applications that meet one or more of the following competitive preference priorities. Under 34 CFR 757.20(d), the Secretary awards up to 25 points to an application that meets one or more of the competitive preference priorities in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for this program.

Competitive Preference Priority 1

Projects that benefit students or schools with below-average academic performance.

Competitive Preference Priority 2

Projects that lead to increased access of all students to a high quality education.

Competitive Preference Priority 3

Projects that develop or implement a system for providing incentives to schools, administrators, teachers, students or others to make measurable progress toward specific goals of improved educational performance.

Invitational Priorities

Within the absolute priority specified in this notice, the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, under 34 CFR 75.105(c)(1), an application that meets an invitational priority does not receive competitive or absolute preference over other applications.

Invitational Priority 1

Projects that improve the sequencing and articulation of curricula across all educational levels, from the early grades through college, of disciplines identified in AMERICA 2000 and the National Education Goals, including: English, foreign languages, history, geography, mathematics, and sciences.

Invitational Priority 2

Projects that design courses that build upon prior learning and avoid repetition and gaps in terminology and perspective.

Invitational Priority 3

Projects that encourage the use of a content-based pedagogy.

Invitational Priority 4

Projects that develop textbooks and auxiliary materials that assist in the sequencing and articulation of curricula across the elementary, secondary, and postsecondary levels.

Invitational Priority 5

Projects that prepare school teachers, both through preservice and inservice training, to work with articulated curricula.

Invitational Priority 6

Projects that demonstrate the value of collaboration among educators at the elementary, secondary, and postsecondary levels.

Invitational Priority 7

Projects that show the commitment to the project of the applicant and other participating organizations as evidenced by: (1) Contribution of resources by the applicant and any other participating organization; (2) prior work in the areas of concern of the project; and (3) potential for continuation of the project beyond the period of support.

Supplementary Information

In addition to this competition, the Fund for the Improvement of Postsecondary Education (FIPSE) is conducting a separate competition that addresses issues similar to those described in this announcement. Together these competitions support AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals by seeking to enhance student achievement and school and teacher performance across all grade levels. The Fund for the Improvement and Reform of Schools and Teaching (FIRST) and FIPSE are two distinct programs within the Department of Education. While both FIRST and FIPSE are dedicated to educational reform, FIRST focuses on elementary and secondary education, and FIPSE on postsecondary education. Therefore, the FIRST and FIPSE competitions establish different priorities and objectives. However, the primary focus of both competitions is the need for linkages and cooperation across the elementary, secondary, and postsecondary educational levels.

Potential applicants should review both the FIRST and the FIPSE materials. A review of the materials for both competitions will provide important information for an applicant to determine which competition is more appropriate to its situation. Applications focused primarily on the elementary and secondary levels should be submitted to FIRST, and applications focused primarily on postsecondary levels should be submitted to FIPSE. Applications that incorporate significant elements of an inclusive K–12 and postsecondary approach could be submitted to both programs.

Applicants are encouraged to focus on the substantive elements common to the FIRST and FIPSE competitions as described in the competitions priorities and application materials. (For more information about the FIPSE competition, refer to its announcement in this issue of the **Federal Register**.)

As additional background, it is important to note that a joint FIRST/FIPSE conference on issues of K–12 and postsecondary collaboration was held on September 17–18, 1990. It was attended by representatives from colleges, schools, and educational associations. Papers in four subject areas (biology, English, foreign language, and history) provided the underlying structure, and addressed curricular, pedagogical, and textbook issues in each subject. Highlights of relevant findings from that conference include the following:

(a) Low achievement in central academic subjects at both the school and postsecondary levels can be attributed, in part, to inadequacies in curricular sequencing and articulation—across elementary and secondary grade levels and between secondary schools and postsecondary initiatives.

(b) The experience of learning must be a coherent one in order to make a permanent impression on a student. Knowledge that comes in bits and pieces falls inevitably through the net of memory, and is lost.

(c) The gaps, arbitary sequencing, constant shifts in terminology and perspective, and repetitions as students move from one grade level to another have a negative effect upon achievement.

(d) Discontinuity between the various grade levels can be ameliorated through increased attention to the problem.

(e) An immediate and important purpose of school is to learn what is being taught—the content of the curriculum. Hence, reforms in teaching, in materials and delivery, indeed in any aspect of schools—from budgets to schedules—all presuppose clear curricular goals and guidelines.

(f) There is an immediate need to prepare K–12 and college teachers, both through preservice and inservice training, to work with improved and articulated curricula, not least by ensuring that the teachers themselves have profited form coherent curricula in their own education, kindergarten through college.

(g) Improved curricula calls for collaboration. Effective collaboration aims at attainable goals, requires the most effective use of resources (i.e., time and money), builds trust across levels and organizations, requires an equal partnership, lasts for a sustained period of time, provides professional rewards, and instigates and nurtures far-reaching and broadly-conceived reforms.

This grant competition responds to the work and findings of the joint conference and to directions recommended for the FIRST and FIPSE programs by their respective Boards.

In addition, the Secretary is interested in projects that have the potential to be disseminated by the National Diffusion Network (NDN). The NDN is a dissemination system through which proven exemplary education programs and processes are made available to interested school systems or other educational institutions around the country. In order to become eligible for dissemination by NDN, a project must be proven to be effective. Evidence of project effectiveness must be collected and presented to the Department's Program Effectiveness Panel (PEP). Projects that are judged effective by PEP become eligible to compete for dissemination funds from the NDN. Therefore, the Secretary encourages applicants who are interested in having their projects disseminated by the NDN to include an evaluation plan that will assess effectiveness and impact of project activities with emphasis upon changes in school practices and student performance.

For Applications or Information Contact

Carl Jensen, U.S. Department of Education, Fund for the Improvement and Reform of Schools and Teaching, 555 New Jersey Avenue, NW., room 522, Washington DC 20208–5524. Telephone: (202) 219–1496. For applications and information on the FIPSE competition contact: Sherrin Marshall, FIPSE, U.S. Department of Education, room 3100, ROB–3, 7th and D Streets, SW., Washington, DC 20202–5175. Telephone: (202) 708–5750. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority

20 U.S.C. 4811–4812.

Dated: January 8, 1992.

Diane Ravitch,

Assistant Secretary for Educational Research and Improvement and Counselor to the Secretary.

[FR Doc. 92–875 Filed 1–13–92; 8:45 am]

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Note: The List of Public Laws for the first session of the 102d Congress has been completed and will be resumed when bills are enacted into public law during the second session of the 102d Congress, which convenes on January 3, 1992. A cumulative list of Public Laws for the first session was published in Part II of the **Federal Register** on January 2, 1992.

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Of significant historical interest is Appendix C, which lists the agencies and functions of the Federal Government abolished, transferred, or changed in name subsequent to March 4, 1933.

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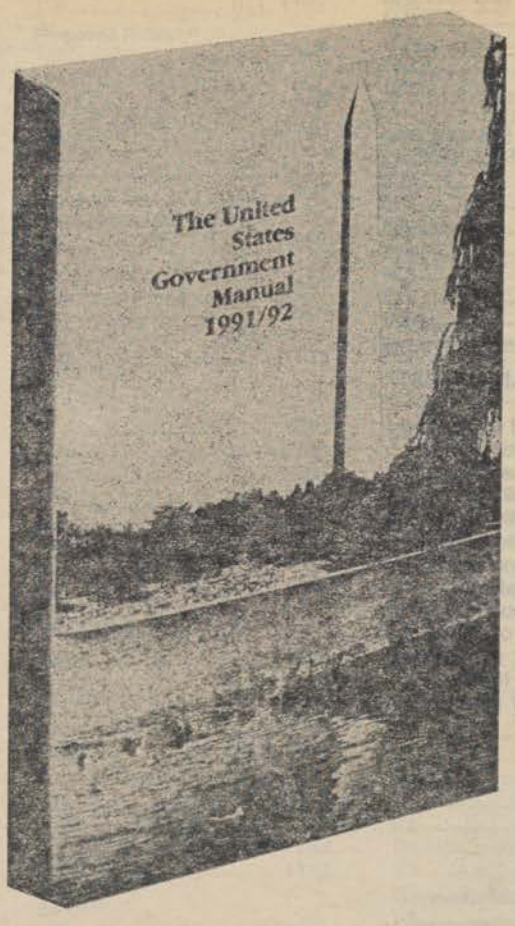

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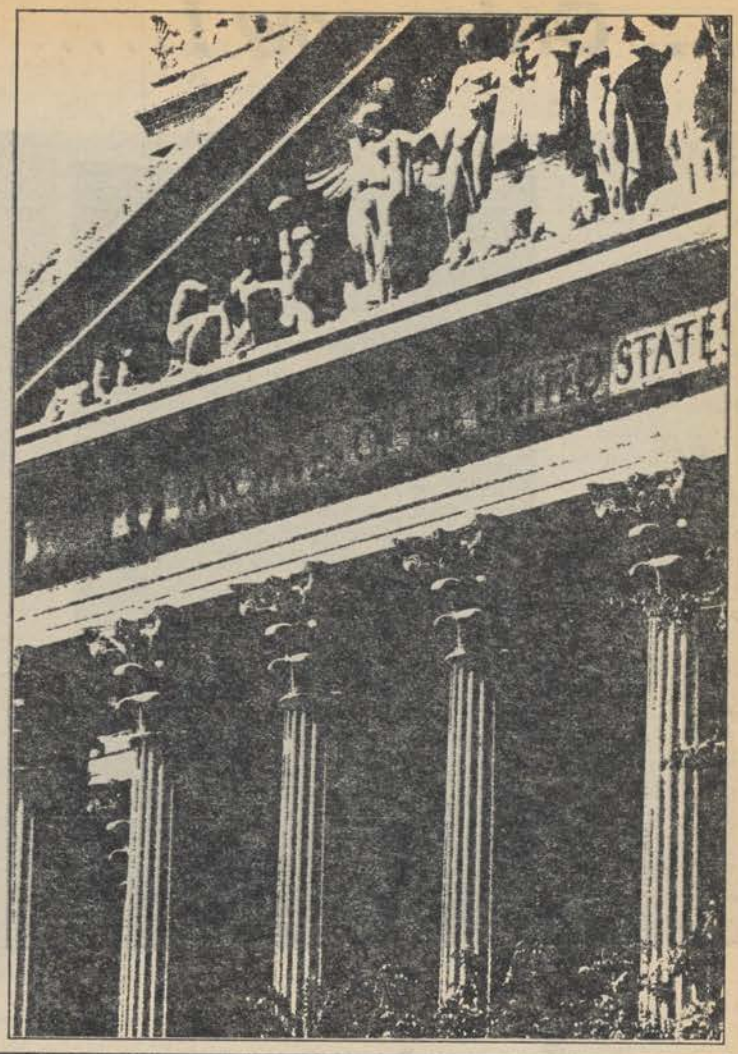

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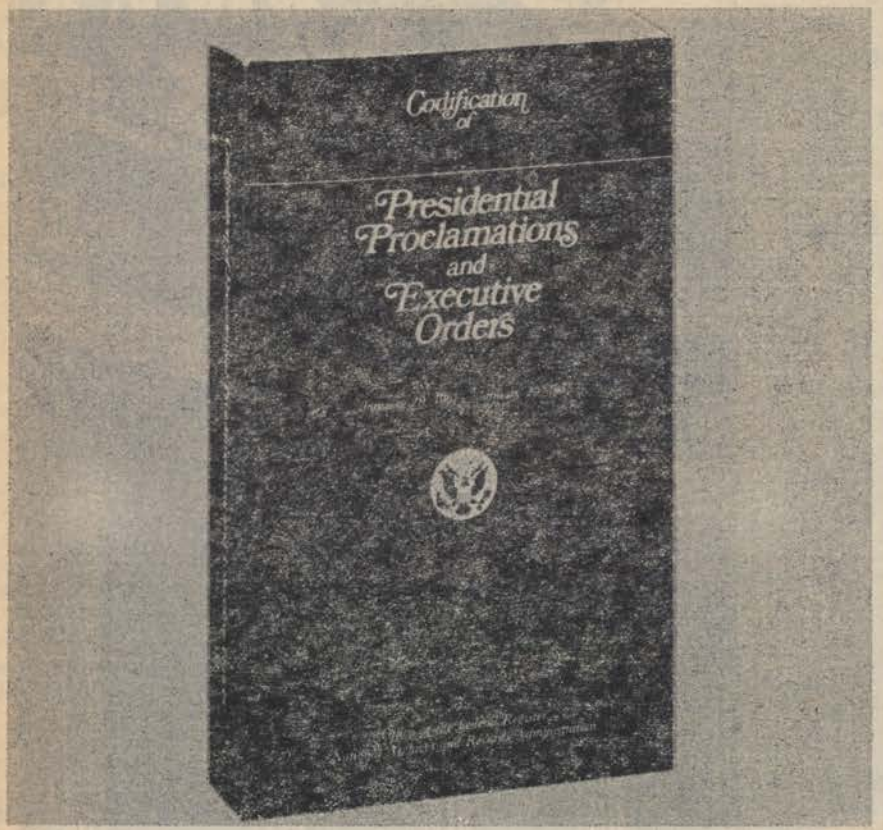

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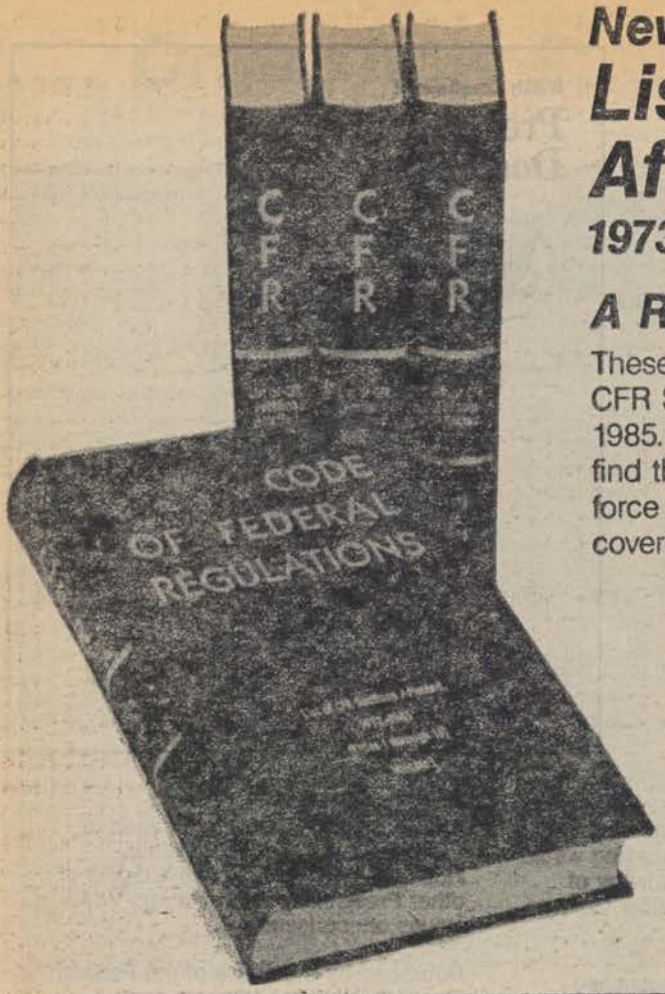

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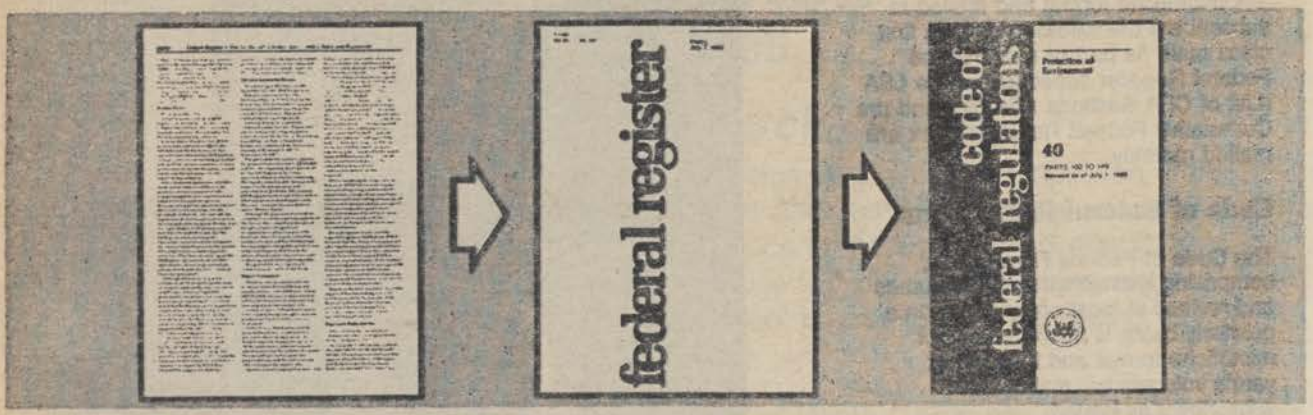

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